APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1470

BOB JONES UNIVERSITY,

Petitioner,

v.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, ET AL.

Respondents.

ON WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DOCKETED APRIL 30, 1973
PETITION FOR CERTORARI GRANTED OCTOBER 9, 1973

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FOR THE DISTRICT OF SOUTH CAROLINA

C.A. 71-891 Bob Jones University vs. John B. Connally, Sec., etc.

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9-9-71	Complaint and Summons	(J.S. 5)
9-9-71	Motion for Temporary Restraining Order and preliminary injunction	
9-9-71	Affidavit of Dr. R. K. Johnson in Support of Motion.	
9-9-71	Affidavit of Dr. Bob Jones III, in Support of Motion.	
9-9-71	Affidavit of John E. Fowler in support of Motion.	
9-9-71	Affidavit of Bob Jones, Jr., in support of Motion.	
9-10-71	Plaintiff's Certificate pursuant to Rule 65 (b) of the Federal Rules of Civil Procedure.	
9-10-71	Hearing (CES, Jr.) Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order.—No opinion handed down. Case is to be tried on these motions on October 4, 1971, at 11:00 A.M. in Greenville, S. C.	
9-13-71	Plaintiff's Notice of Motion for Temporary Restraining Order and Preliminary Injunction Hearing Oct. 4, 1971 at 11:00 A.M. (copies delivered to Marshal for service)	
9-13-71	U.S. M. Return on Complaint and Motion—U.S. Attorney General served by certified mail 9-13-71; U.S. Dist. Attorney served in Columbia 9/13/71.	
9-13-71	Ret. USM on Complaint and Motion—John B. Connally, Sec. of Treasury, etc., served by certified mail on 9-13-71. (#344886)	

9-13-71 Ret. USM on Complaint and Motions—Johnnie M. Walters, Commissioner of IRS served by certified mail on 9-13-71 #344884.

9-16-71 Ret. USM on Notice—John B. Connally, Sec. of Treas., served by certified mail 9-15-71, #981260; Johnnie M. Walters, Com. of IRS served by certified mail 9-15-71 #981263; U.S. Atty. Gen. served by certified mail 9-15-71 #981261; U.S. Dist. Atty., served in Columbia 9/15/71.

9-21-71 Plaintiff's Motion for leave to take depositions pursuant to Rule 30(a) FRCP.

9-21-71 Affidavit of Wesley M. Walker in support of Motion to take depositions.

9-21-71 Affidavit of Fletcher C. Mann.

9-27-71 Defendants' Motion to Dismiss.

9-28-71 Defendants' Opposition to Plaintiff's Motion for Leave to Take Depositions, with support Memorandum.

9-28-71 Affidavit of William H. Connett in support of Defendants' Motion to Dismiss, with support Memorandum.

9-28-71 Certificate certifying that counsel are unable to dispose of issues involved in Defendants' Motion to Dismiss.

9-28-71 Order (CES jr) directing that there is no necessity to take deposition of Johnnie M. Walters, but directing that deposition of Wm. H. Connett, Asst. to Commissioner of Internal Revenue may be taken with reference to whether or not a decision has been reached on the Washington level as to the revocation of the tax exempt status of the plaintiff.

9-30-71 Plaintiff's Motion to Produce.

10-1-71	13 Affidavits, in Support of plaintiff's Motion for Preliminary Injunction as follows: Mrs. J. W. Stewart, Charles Loving, Arnold Fletcher Anderson, Charles Baldwin, John McLario, A. L. Hayes, Evelyn Coffman, Florence Post, Paul W. Doll, Jr., Martin H. Bartlett, Jo Ann Hatcher, Joe N. Cocke, and O. Jack Taylor, Jr.
10-4-71	Defendant's Opposition to Request to Produce.
10-4-71	HEARING (CESjr) on plaintiff's Motion for preliminary injunction and defendants' Motion to Dismiss. Taken under advisement, proposed Orders to be submitted to the Court within 15 days, also counsel may file additional affidavits within 1 week.
10-5-71	Deposition of William H. Connett.
10-19-71	Received proposed Findings of Fact and Conclusions of law together with Affidavit in support of Defendants' Motion to Dismiss.
10-26-71	Affidavit in Support of Motion for Preliminary Injunction.
11-17-71	Order (CES, Jr.) that the Defendant's Motion be denied and that the Defendants are enjoined from revoking or threatening to revoke the tax exempt status of Plaintiff and further enjoined advanced assurance deductibility of contributions solely because of the admissions policy of Plaintiff pending a final hearing and determination of this cause on the merits. Copy of Order to counsel.
12-27-71	Answer
12-14-72	Defendant's Notice of Appeal.
1-18-72	Record & Deposition to Clerk, Fourth Circuit Court of Appeals.

A-4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BOB JONES UNIVERSITY,
Plaintiff,

vs.

JOHN B. CONNALLY, SECRETARY OF THE TREASURY OF THE UNITED STATES AND JOHNNIE M. WALTERS, COMMISSIONER OF INTERNAL REVENUE,
Defendants.

COMPLAINT

Civil Action No. 71-891

The Plaintiff would respectfully show:

I

This action is for preliminary and permanent injunctive relief enjoining the Defendants from revoking or threatening to revoke the tax exempt status of Plaintiff solely because of the Plaintiff's admissions policy.

II

This action arises under the Constitution of the United states, the First and Fifth Amendments thereto, and the Internal Revenue Code of 1954. The matter in controversy exceeds, exclusive of interest and cost, the sum of $10,000. This Court has jurisdiction of this action under 28 U.S.C. Sections 1331, 1340, 1343 and 1361.

III

The Defendant, John B. Connally, is Secretary of the Treasury of the United States. The Defendant, Johnnie M. Walters, is Commissioner of Internal Revenue.

IV

The Plaintiff is an eleemosynary corporation created under the laws of the State of South Carolina, engaged in religious and educational activities in Greenville, South Carolina. The Plaintiff is a private religious school, organized and operated exclusively for charitable, religious and educational purposes and is presently an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, and has been declared so by virtue of an advance determination letter issued by the Defendants' predecessors in office.

V

Since its foundation and for a period in excess of forty (40) years, Plaintiff has consistently adhered to certain religious beliefs and practices among which is the belief that God set up racial barriers and that the mixing of the races is contrary to the teachings of the Bible.

VI

Based upon the religious beliefs upon which it was founded and has been continuously operated, Plaintiff has adopted an admissions policy which excludes admission of members of the Negro race.

VII

Heretofore, the Defendants published certain policies, statements or news releases stating that the tax exempt status of private schools including religious schools such as Plaintiff would be revoked if such schools, including Plaintiff, did not adopt racially non-discriminatory admissions policies.

VIII

By letter dated November 30, 1970, Defendants, acting by and through the District Director of Internal Revenue, have stated that the tax exempt status of Plaintiff will be revoked and its advance determination letter withdrawn unless Plaintiff establishes and maintains a racially non-dis-

criminatory admissions policy contrary to the religious beliefs and practices upon which Plaintiff was founded and has been continuously operated.

IX

If the tax exempt status of the Plaintiff is revoked as threatened, the Plaintiff will suffer irreparable harm and damage for which there is no adequate remedy at law in that:

(a) Plaintiff will be forced to employ accountants and other personnel at substantial cost in order to prepare and file any required tax returns with the Internal Revenue Service, resulting in disruption of its organization and operation.

(b) Plaintiff will be subject to substantial tax liability in excess of $10,000 which would seriously deplete its funds and jeopardize its continued operation.

(c) Donations and gifts to Plaintiff, upon which Plaintiff relies, from various persons, firms and corporations would be eliminated or curtailed due to their inability to deduct said donations and gifts in computing their tax liability under the Internal Revenue Code of 1954. Plaintiff, without said gifts and donations, would be unable to continue its programs, and its funds would be seriously depleted and its continued operation threatened.

X

The Defendants' action, as threatened by said letter of November 30, 1970, is unlawful in that it exceeds the authority vested in the Defendants by the Internal Revenue Code of 1954.

XI

The Defendants' action as threatened by said letter of November 30, 1970, is contrary to the provisions of 501(c)(3) of the Internal Revenue Code of 1954 in that said provisions set forth certain criteria for exempt status, none of which involve the admissions policies of exempt organizations carrying out educational and religious activities.

XII

The Defendants' action, as threatened by said letter of November 30, 1970, is in violation of the First Amendment to the Constitution of the United States in that it would deprive Plaintiff of the right to the free exercise of its religious beliefs.

XIII

The Defendants' action, as threatened by said letter of November 30, 1970, is in violation of the First Amendment to the Constitution of the United States in that it would promote, benefit and establish those religions believing in the mixing of the races.

XIV

The Defendants' action, as threatened by said letter of November 30, 1970, is in violation of the Fifth Amendment to the Constitution of the United States in that it would deny Plaintiff due process and equal protection of the law.

XV

The Defendants' action, as threatened by said letter of November 30, 1970, is in violation of the First Amendment to the Constitution of the United States in that it would deprive Plaintiff of its right to express and practice its beliefs by conducting and sponsoring the peaceful assembly and association of those who share its beliefs.

XVI

The Defendants' action, as threatened by said letter of November 30, 1970, is unlawful and in violation of the Constitution of the United States in that it constitutes an attempt to exercise legislative power by the executive branch.

Wherefore, Plaintiff prays that this Court issue its preliminary and permanent injunction enjoining Defendants, their agents, servants, deputies, employees and successors in office from revoking or threatening to revoke the tax exempt status of Plaintiff solely because of its admission policy.

(Signatures and Vertification omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

CIVIL ACTION NO. 71-891

Upon the verified Complaint and the Affidavits of Dr. Bob Jones, Jr., Dr. Bob Jones, III, Dr. R. K. Johnson and John E. Fowler, annexed hereto, the Plaintiff moves the Court as follows:

(1) To issue a temporary restraining Order restraining the Defendants from revoking the tax exempt status of Plaintiff and withdrawing the advanced determination letter of exempt status heretofore issued by the Defendants' predecessors in office as specified in the Complaint herein, pending the hearing upon the issuance of the preliminary injunction sought hereinafter in this Motion and the determination thereof.

(2) To issue a preliminary injunction enjoining the Defendants from revoking the tax exempt status of the Plaintiff and withdrawing the advanced determination letter issued by the Defendants' predecessors in office which is specified in the Complaint herein pending the final hearing and determination of this cause.

The grounds of this Motion as more fully set forth in the Complaint and the annexed Affidavits are that:

(a) The threatened action of the Defendants is illegal and in violation of the Constitution of the United States and the First and Fifth Amendments thereto;

(b) The Defendants unless enjoined will revoke the tax exempt status of Plaintiff;

(c) The revocation of the tax exempt status of Plaintiff will cause immediate and irreparable injury to the Plaintiff;

(d) Unless the Defendants are enjoined and restrained pending final disposition of this action, the injury to the

Plaintiff in the interim will be irreparable even by final judgment for Plaintiff;
(e) No injury will be sustained by the Defendants or by the public through the issuance of a temporary restraining Order or preliminary injunction.

(Signatures and Verification omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

CIVIL ACTION NO. 71-891

State of South Carolina
County of Greenville

Personally appeared before me Dr. R. K. Johnson, who first being duly sworn states and deposes:

I am Secretary-Treasurer and Business Manager of Bob Jones University, Plaintiff in the above captioned action. I am thoroughly familiar with the religious beliefs and principles and operation of the Bob Jones University.

Bob Jones University was founded and has been continously operated in accordance with fundamentalist religious beliefs and practices. Among these religious beliefs and practices is the belief that God has ordained the separation of the races and that it is contrary to the principle of the Word of God for members of different races to marry each other. Based upon these religious beliefs and practices, Bob Jones University has adopted an admissions policy which excludes the admission of members of the Negro race.

Bob Jones University depends upon gifts and donations and income from its operations to support its continued operation and growth. I am informed and believe that if the tax exempt status of Bob Jones University is revoked as

threatened by Defendants, that substantial sums will be payable by the University to the United States Government in income taxes as well as other taxes imposed by the Federal Government. In addition, I am informed and believe that contributions to the University from various persons, firms, foundations, trusts, and corporations will be surely curtailed and perhaps eliminated if the tax exempt status of Bob Jones University is revoked.

The net result of revocation of the University's tax exempt status will be that funds which would otherwise be used for its operation and growth would be expended in the payment of Federal taxes or would not be received from potential donors.

If the University's funds are curtailed or restricted, it will be necessary for the University to review its tuition and fee schedule. I am informed and believe that it will be necessary for the University to increase tuition and fees and that such increase in tuition and fees will result in many students being unable to afford to attend Bob Jones University, thus, restricting its student body and threatening its continued operation.

If the funds of the University are restricted or curtailed, the University will be required to re-examine its scholarship help program. I am informed and believe that in such event the University will be forced to restrict its scholarship help program, both in the number of scholarships granted and in the amount of each scholarship. To thus restrict the scholarship help program of Bob Jones University will result in a reduction in the number of members of its student body thus threatening its continued operation.

Bob Jones University employes a faculty and staff of approximately 650 persons. These persons are employed at salaries substantially below those paid by other educational institutions. There is an implied understanding between the University and members of its faculty and staff which has been consistently adhered to and honored by Bob Jones University that Bob Jones University will provide retirement

benefits including housing and medical care to members of the University's faculty and staff who reach retirement age. If the funds of Bob Jones University are restricted or curtailed, it will be difficult to provide such retirement benefits to faculty and staff as they retire. If Bob Jones University is unable to provide such retirement benefits it will be difficult, if not impossible, for Bob Jones University to maintain its present faculty and staff and to recruit additional members of its faculty and staff. Any curtailment of the University's ability to provide such retirement benefits will, upon information and belief jeopardize its continued operation.

Bob Jones University has a building program which is dependent upon such funds. Presently, University dormitory space is inadequate to such an extent that three or four students are assigned to one room. In addition, library space is lacking to the extent that books must be stored in aisles and students are required to use other buildings because of inadequate facilities in the library reading room. I am informed and believe that if the University's tax exempt status is revoked that it will be difficult, if not impossible, to construct much needed library and dormitory facilities.

Bob Jones University presently has under construction an amphitorium, the total construction cost of which will be between two and one/half and three million dollars. I am informed and believe that if the University's tax exempt status is revoked as threatened, that the University may be unable to complete construction of this amphitorium. Should the University be unable to complete construction of this amphitorium, it would have expended large sums of money and not have received the benefit of the use of the amphitorium, all to its irreparable harm and damage.

Bob Jones University owns an apartment building known as Campus View by which it provides apartments to members of its faculty and staff, said apartment building is presently encumbered by a mortgage debt of approximately one million dollars. Bob Jones University depends upon gifts and contributions to pay the installments on said mortgage as they be-

come due. I am informed and believe that if the tax exempt status of Bob Jones University is revoked as threatened, that it would be difficult for the University to continue making said mortgage payments as they become due. In addition, the University has planned to add ten additional floors to said apartment building and has caused to be prepared and paid for blueprints and drawings for said addition. I am informed and believe that if the tax exempt status of Bob Jones University is revoked as threatened, that it will be impossible for the University to make such addition, all to the University's irreparable harm and damage.

Bob Jones University has been exempt from Federal income tax since its organization. By letter dated March 30, 1951, a copy of which is attached, Bob Jones University was notified by the Office of the Commissioner of Internal Revenue that it was an exempt organization. The character of Bob Jones University, the purpose for which it was organized and its method of operation have not changed since March 30, 1951, the date of said letter. Similar letters were received by Bob Jones University from the Internal Revenue Service prior to said letter of March 30, 1951.

(Signature and Jurat omitted)

Letterhead of U.S. Treasury Department
Washington, D.C.

Office of Commission of Internal Revenue

Bob Jones University, Inc.
c/o Robert K. Johnson
Greenville, South Carolina

Gentlemen:

It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax under the provisions of section 101(6) of the Internal Revenue Code

and corresponding provisions of prior revenue acts, as it is shown that you are organized and operated exclusively for educational purposes.

Accordingly, you will not be required to file income tax returns unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such changes should be reported immediately to the collector of internal revenue for your district in order that their effect upon your exempt status may be determined.

Contributions made to you are deductible by the donors in computing their taxable net income in the manner and to the extent provided by section 23(o) and (q) of the Internal Revenue Code, as amended, and corresponding provisions of prior revenue acts.

Bequests, legacies, devises or transfers, to or for your use are deductible in computing the value of the net estate of a decedent for estate tax purposes in the manner and to the extent provided by sections 812(d) and 861(a) (3) of the Code and/or corresponding provisions of prior revenue acts. Gifts of property to you are deductible in computing net gifts for gift tax purposes in the manner and to the extent provided in section 1004(a) (2) (B) and 1004(b) (2) and (3) of the Code and corresponding provisions of prior revenue acts.

It will not be necessary for you to file the annual return of information, Form 990A, generally required of organizations exempt under section 101 of the Internal Revenue Code, as you come within the specific exceptions contained in section 54(f) of the Code.

In the event you have not filed a waiver of exemption certificate in accordance with the provisions of section 1426 (1) of the Code, no liability is incurred by your organization for the taxes imposed under the Federal Insurance Contributions Act. Tax liability is not incurred by your organization

under the Federal Unemployment Tax Act by virtue of the provisions of section 1607(c) (8) of such Act.

The collector of internal revenue for your district is being advised of this action.

This ruling affirms Bureau ruling of April 30, 1942 addressed to you under your former name, Bob Jones College, holding you exempt from Federal income tax under the provisions of section 101(6) of the Internal Revenue Code and corresponding provisions of prior revenue acts.

By direction of the Commissioner.

(Signature omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

Personally appeared before me Dr. Bob Jones, III, who first being duly sworn, states and deposes:

I am President of Bob Jones University and as such I am thoroughly familiar with the beliefs, operations, and history of Bob Jones University.

Bob Jones University was founded as Bob Jones College near Panama City, Florida in 1926. Bob Jones University was not founded for the purpose of avoiding or allowing others to avoid court ordered integration. Bob Jones University has not been operated and is not operated for the purpose of allowing anyone to avoid the effects of integration, whether court ordered or otherwise.

Bob Jones University was founded as a fundamentalist, religious school as set forth in the original purpose and creed

of the University which has remained unchanged since its founding. This purpose and creed is as follows:

> The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combatting all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; his identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

This purpose and creed serves as the purpose clause of the University's charter today. The University charter, a copy of which is attached, has been amended only once. Such amendment provides that the charter and creed may never be again amended.

One of the ethics which I believe to be revealed in the Holy Scriptures and referred to in the University creed and charter is that God has set bounds of habitation for the nations or races of the world. My religious beliefs and those of the University prohibit any action or policy which would violate these religious beliefs and practices by tending to break down these boundaries which I believe God has erected.

Bob Jones University is committed to acting in accordance with its religious beliefs and creed. I believe that if the University were to act contrary to its stated religious beliefs and principles, that these religious beliefs and principles

would be for all purposes destroyed and that the University's purpose as stated in its creed and charter of promoting these religious beliefs and practices through its educational activities would be destroyed.

I believe that God set up barriers between the races and that God has ordained the separation of the races and that it is contrary to the principles of the Word of God for individuals of different races to marry each other. I further believe that to promote such inter-marriage or to provide conditions under which such inter-marriage is more likely to occur is contrary to the Word of God. I further believe that if Bob Jones University were to admit members of the Negro race that the University would be promoting such inter-marriage and would be providing conditions under which such inter-marriage is more likely to occur contrary to the religious beliefs and practices upon which the University was founded and has been continuously operated.

These beliefs and practices of the University are more fully set forth in the booklet "Is Segregation Scriptural", a transcription of a radio address made by the founder of Bob Jones University, my Grandfather, Dr. Bob Jones, on April 17, 1960, a copy of which is attached hereto and incorporated herein.

I am informed and believe that other religions adhere to beliefs and practices which promote the mixing and inter-marriage of the races. I believe that such religions and their beliefs and practices are contrary to the principles of the Word of God which Bob Jones University is committed to uphold. I am informed and believe that the Defendants have not and will not threaten to revoke the tax exempt status of such religions or religious and educational institutions operated by such religions.

In furtherance of its religious beliefs and principles, Bob Jones University had adopted and enforced a rule prohibiting its students from dating or marrying members of another race, whether students or not. Violation of this rule results in expulsion from the University.

I am informed and believe that there are certain organizations in existence in the United States and within the State of South Carolina which advocate and actively promote the mixing of the Negro and Caucasian race. I believe that these organizations and persons in concert with them would actively seek to subvert the University's rule and policy of prohibiting its students from dating members of another race should Negroes be permitted to attend Bob Jones University.

The majority of young people date and marry those with whom they are associated at institutions of higher learning such as Bob Jones University. I believe it would be impossible to enforce the University's prohibition against inter-racial dating and marriage if the University adopted a racially non-discriminatory admissions policy.

Bob Jones University presently enrolls approximately 4,500 students and employs approximately 650 on its faculty and staff and carries on its religious and educational activities on its campus valued at approximately 30 million dollars, located in Greenville, South Carolina.

Bob Jones University requires all students to attend daily chapel services at which the religious views and principles of the University are taught. All classes and meetings held under University sponsorship are begun and ended with prayer. All students are required to take courses in religion. All University buildings and classrooms bear religious pictures and plaques.

All faculty members of the University are required to teach and upon information and belief all adhere to the religious beliefs and principles of the school. Any member of the faculty or member of the student body teaching or promoting religious beliefs contrary to the beliefs of the University is subject to expulsion or dismissal.

Religious instruction and training is required of all students at Bob Jones University. Required courses for the Bachelor of Art Degree and the Bachelor of Science Degree include ten semester hours of Bible. The University bulletins state: "A course in Bible must be elected each semester by

all students. Exceptions may be made only in the case of students who have completed a concentration in one of the fields of this school."

The admissions standards of Bob Jones University relate not only to academic achievement but include standards relating to applicant's religious convictions. No atheist or agnostic is considered for admission.

Bob Jones University does not accept Federal or state grants in aid or participate in any program financed by the Federal government or any state government. The University has refused to participate or be a part of such programs because, inter alia, to do so the University would be required to adopt a racially non-discriminatory admissions policy, contrary to the University's religious beliefs and practices.

Bob Jones University is known as the "world's most unusual University." I believe that in large measure Bob Jones University is the world's most unusual University, and unique among fundamentalist religious training. I know of no other educational institution in the United States which offers educational and religious instruction as does Bob Jones University.

In December of 1970, Bob Jones University received from the District Director of Internal Revenue in Columbia, South Carolina, a letter with enclosures, copies of which are attached, stating that Bob Jones University is not entitled to tax exempt status under the Internal Revenue Code if it discriminates on the basis of race in its admission of students. I am informed and believe that if not restrained, the Defendants will revoke the tax exempt status of Bob Jones University.

(Signature and Jurat omitted)

PURPOSE CLAUSE FROM CHARTER OF BOB JONES UNIVERSITY

The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of cul-

ture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combatting all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; his identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

IS SEGREGATION SCRIPTURAL?

ADDRESS GIVEN OVER
RADIO STATION WMUU,
BOB JONES UNIVERITY,
GREENVILLE, SOUTH CAROLINA,
APRIL 17, 1960

(This address was mechanically recorded and has not been edited.)

My friends, I am going to bring you today one of the most important and most timely messages I have ever brought. I hope you will sit close to the radio. Do not let anything disturb you. I want you to hear this message through.

Now, we folks at Bob Jones University believe that whatever the Bible says is so, and we believe it says certain fundamental things that all Bible-believing Christians accept; but when the Bible speaks clearly about any subject that settles it. Men do not always agree, because some people are dumb – some people are spiritually dumb; but when the

Bible is clear, there is not any reason why everybody should not accept it.

The Bible makes some things plain. It makes it plain how to be saved. We are saved by grace through faith in the atoning blood of Christ. The Bible makes it plain that man is naturally a sinner and that he has to become supernaturally a Christian – born again.

All orthodox, Bible-believing Christians agree on one thing; and that is, that whatever the Bible says is so. When they had old religious debates, they used to get together and say, "Well, we will discuss this subject." One man would say, "The Bible says this," and another man would say, "You are mistaken. It says this." They argued about what the Bible said. They agreed that whatever it said was so, but they argued about what it said.

In recent years there has been a subtle, Satanic effort to undermine people's faith in the Bible; and the devil has led the race along until men have put their own opinion above the Word of God. You will find that practically all the troubles we are having today have come out of the fact that men in many instances have ceased to believe in an authoritative Bible.

For instance, we are living in the midst of race turmoil all over the world today. Look at what they are facing in Africa, and look at what we are facing in this country. It is all contrary to Scripture – it is all contrary to the Word of God. I am going to show you that the Bible is perfectly clear on races – just as clear as it can be.

People come along and say, "Well, God is the Father of everybody." No, He is not. God is the Father of born-again people. The Bible says this as clearly as it can be put in language. We are children of God by faith in Jesus Christ.

There is no trouble between a born-again white man and a born-again colored man or a born-again Chinese or a born-again Japanese. Born-again, Bible-believing Christians do not have trouble. They may not understand some things; but

when we give them the Word of God for it, they see it and understand it.

You know, we have gotten away from the Bible. Modern education came along and put the opinion of man above the Word of God, and man has come along and tried to give us an explanation. All you have to do is live up to the Word of God and you will have no trouble about knowing how to meet life's problems.

What does God teach about the races of the world? If you will go to the seventeenth chapter of the Acts of the Apostles, you will find where Paul preached a special sermon on Mars Hill. Remember now, Athens was the center of culture. There are still fragments of the Athenian culture today in the museums over there; and you can walk around among the crumbled ruins. Paul was there. Paul was chosen of God (he was a Jew) to be the great apostle to the Gentiles. I think the greatest man who ever lived was Paul — I mean I think he was greater than Moses and greater than any other man who ever lived. Of course, I am not talking about the Lord Jesus Christ Who was God-Man. But to my mind, no other mere human ever reached the height of greatness that Paul reached. He was honored as God never honored any other man. He suffered as few men have ever had to suffer. He was misunderstood; but, oh, what a man he was.

Paul tells us in his sermon on Mars Hill, "God that made the world and all things therein, seeing that he is Lord of heaven and earth, dwelleth not in temples made with hands." Now, the statue of the Grecian goddess, Athena, was in the Parthenon; and Paul said that God did not dwell in buildings made with hands. "Neither is worshipped with men's hands, as though he needed any thing, seeing he giveth to all life, and breath, and all things."

Now, notice — this is an important verse — the twenty-sixth verse of the seventeenth chapter of the Acts of the Apostles, "And hath made of one blood all nations of men for to dwell on all the face of the earth" (in some of the best original manuscripts, the word "blood" is not there; but it is not important anyhow, because the thoughts are the

same.) "And hath made of one blood all nations of men for to dwell on all the face of the earth. . . ." But do not stop there," . . .and hath determined the times before appointed, and the bounds of their habitation." Now, what does that say? That says that God Almighty fixed the bounds of their habitation. That is as clear as anything that was ever said.

If you have a legal document and there is a paragraph that is clear and you come across an obscure passage, you interpret the obscure passage in the light of the clear passage. Any lawyer will tell you that. If he has a case in court, he will say, "Now, gentlemen of the jury, here is what this paragraph says. This one paragraph is not quite clear, but this other paragraph is clear; and we will interpret this in the light of the clear passage."

God Almighty did not make of the human race one race in the sense that He did not fix the bounds of their habitation. That is perfectly clear. It is no accident that most Chinese are in China. There has been an overflow in the world, but most Chinese live in China. There are millions and millions of them there, and there are no greater people in the world. I have never known lovelier and more wonderful people than the Chinese.

We were over in Formosa a few years ago and conferred an honorary degree on Generalissimo Chiang Kai-shek, and I never met a greater man. I never met a man of more intelligence or a more wonderful Christian; and Madame Chiang Kai-shek is a wonderful woman. There they are. Now, what happened? They married each other. She was a Christian Chinese woman educated in America. When she finished her education, she went back to her home in China. How God has used Generalissimo and Madame Chiang Kai-shek – not only as Christian witnesses but also in other ways. I was never with a man who pulled me to him with stronger ties than Generalissimo Chiang Kai-shek when I was over there and conferred an honorary degree on him. All right, he is a Chinese. He married a Chinese woman. That is the way God meant it to be.

Paul said that God ". . . hath made of one blood all nations of men. . . ." But He also fixed the bounds of their habitation. When nations break out of their boundaries and begin to do things contrary to the purpose of God and the directive will of God, they have trouble. The world is in turmoil today because men and nations go contrary to the clear teaching of the Word of God. Let's understand that. The Chinese people are wonderful people. They have internal troubles, of course, because Communism has gone into China and disturbed a great deal of the population. But the Chinese people are wonderful people. The Japanese people are ingenious – they are wonderful people. The Koreans are wonderful people. The Africans are wonderful people. In many ways, there are no people in the world finer than the colored people who were brought over here in slavery in days gone by.

You talk about a superior race and an inferior race and all that kind of situation. Wait a minute. No race is inferior in the will of God. Get that clear. If a race is in the will of God, it is not inferior. It is a superior race. You cannot be superior to another race if your race is in the will of God and the other race is in the will of God. But the purposes of these races were established by Almighty God; and when man attempts to run contrary to the directive will of God for this world, there is always trouble. Now, that is the trouble.

What happened? Well, away back yonder our forefathers went over to Africa and brought the colored people back and sold them into slavery. That was wrong. But God overruled. When they came over here, many of them did not know the Bible and did not know about Jesus Christ; but they got converted. Some of the greatest preachers the world has ever known were colored preachers who were converted in slavery days. John Jasper was one of them. One of the greatest preachers who ever stood before an American audience was John Jasper. And Sam Jones, years ago down in Georgia, told us about an old, colored preacher down there. He said, "There

is no man who ever stood on two legs who could preach like him."

God Almighty allowed these colored people to be turned here into the South and overruled what happened, and then He turned the colored people in the South into wonderful Christian people. For many years we have lived together. Occasionally there will be a flare-up. But the white people have helped the colored people build their churches, and we have gotten along together harmoniously and peacefully; and everything has come along fine. Sometimes we have a little trouble, but then we adjust everything sensibly and get back to the established order. But the good white folks have always stood by their good colored friends, and the good colored folks have always stood by their good white friends. No two races ever lived as close together as the white people and the colored people here in the South and got along so well.

Now, what is the matter? There is an effort today to disturb the established order. Wait a minute. Listen, I am talking straight to you. White folks and colored folks, you listen to me. You cannot run over God's plan and God's established order without having trouble. God never meant to have one race. It was not His purpose at all. God has a purpose for each race. God Almighty may have overruled and permitted the slaves to come over to America so that the colored people could be the great missionaries to the Africans. They could have been. The white people in America would have helped pay their way over there. By the hundreds and hundreds they could have gone back to Africa and got the Africans converted after the slavery days were over.

All right, now what is happening? Down in Africa there is trouble and turmoil. There is racial disturbance all over the world, and it is not of God. The Bible is clear on this. When people come along and say, "Well, God is the Father of everybody,'" they are wrong. He is not the Father of everybody. That is not in the Bible. That is a Satanic lie. Let me repeat, the Bible says as clearly as language can put it that people are children of God by faith in Jesus Christ. We are

children of God by faith in Jesus Christ. That is what the Bible says. Let's take the Word of God and quit slandering the Word of God. We are children of God by faith in Jesus Christ. A born-again white man and a born-again colored man can settle any differences they have. God is their Father. They are children of God by faith in Jesus Christ.

Individually, Christian people in the South — white and black — through the years have been able to work together and to understand each other. But now a world of outside agitation has been started, and people are coming in the name of piety, but it is a false piety, and are endeavoring to disturb God's established order; and we are having turmoil all over America. This disturbing movement is not of God. It is not in line with the Bible. It is Satanic. Now, listen and understand this. Do not let people lead you astray.

"Well," you say, "The colored folks have not been treated right." I agree with you. Neither have the poor white people been treated right. When I was a boy in Southeast Alabama, we lived in what was called the white section of the State. There were not many colored people there. The slaves were in the western part and in the midsection of the State. Down in Southeast Alabama there were some slaves but not many; but they had the reconstruction days — hard days — and the time came along when people were having a hard time. Some white folks were not treated right. They paid 20 per cent interest on money. They were oppressed by people who had money. The colored people down in my country were treated just as well as the white people by businessmen. Any man who would mistreat a colored man would mistreat a white man. If he is mean enough to mistreat one man, he is mean enough to mistreat another.

You can go to any city in the country and find the poor people living in a certain section there. I do not say that things are right. But things are not going to be made right by trying to overthrow God's established order. That is not the way to make things right. You cannot make them right that way. The colored people in the South today are better

off than they are anywhere else in the world. The situation is not a perfect situation for the white folks or the colored folks or for anybody else; but we have never had a perfect situation in this world since Adam and Eve disobeyed God in the Garden of Eden.

I want you folks to listen – you white and you colored folks. Do not let these Satanic propagandists fool you. This agitation is not of God. It is of the devil. Do not let people slander God Almighty. God made it plain. God meant for Christian people to treat each other right. If you are a Christian white person or a Christian colored person, you will treat each other right. We Christians are children of God by faith in Jesus Christ. We are one in Christ; but let us remember that the God Who made of one blood all nations also fixed the boundaries of their habitations.

Yes, Paul said, "God . . . hath made of one blood all nations of men . . . ." All men, to whatever race they may belong, have immortal souls; but all men have mortal bodies, and God fixed the boundaries of the races of the world. Let me repeat that it is no accident that most of the Chinese live in China. It is not an accident that most Japanese live in Japan; and the Africans should have been left in Africa, and the Gospel should have been taken to them as God commanded His people to do.

Wherever we have the races mixed up in large numbers. we have trouble. They have trouble in New York. They have trouble in San Francisco. They have had trouble all over California. Back in the old days when I was a young fellow, Captain Richmond Pearson Hobson went up and down this country and lectured on the "yellow peril" and told us we were going to have trouble with Japan. He said there would be a war with Japan someday. People said, "Oh, well, he is crazy." Other leaders went over this country and lectured on the "yellow peril" and the dangers we were facing. Remember, we did have a war with Japan.

The best friends we have in many ways are in the Orient. There are millions of Chinese over there. Dr. Grace Haight,

who used to be on our faculty and who was a missionary to China, told us that the Chinese were the best people in the world. Let me tell you something. When it comes to quality of races, all these races have quality. They have good qualities and bad qualities.

If we would just listen to the Word of God and not try to overthrow God's established order, we would not have any trouble. God never meant for America to be a melting pot to rub out the line between the nations. That was not God's purpose for this nation. When someone goes to overthrowing His established order and goes around preaching pious sermons about it, that makes me sick – for a man to stand up and preach pious sermons in this country and talk about rubbing out the line between the races – I say it makes me sick. I have had the sweetest fellowship with colored Christians, with yellow Christians, with red Christians, with all sorts of Christians – the sweetest fellowship anybody has ever had, we have had. Christians have always had it. We have never had any trouble about that.

The trouble today is a Satanic agitation striking back at God's established order. That is what is making trouble for us. Of course, it is easy to look back over the years and see the situation from another standpoint; but when the folks up North went to Africa and brought the slaves over to this country and sold them to the Southern people, the Southern people should have been Christian enough to have said, "We will not have any slaves. We are not going ahead." But, you know, they went ahead.

Only a small percentage of the Southern people held slaves. Only a small percentage of them were slave owners. A great many people in the South in the old days did not believe in slavery – they stood against slavery. But they went ahead, and the commercial element was dominant; and people brought slaves and sold them. This slavery was not right. It should not have been. What we should have done was to have sent missionaries to Africa. Yes, that is what we should have done. That would have been in line with Scripture.

God put the Africans over there. They are fine people. They are intelligent people. Do not think they are inferior in every way. It is not so. But we should have sent missionaries over there, and Africa should have been a great nation of colored Christians. If we had done what God had told us to do and sent the Gospel to them and made a Christian nation out of them instead of bringing them over here and selling them into slavery, Africa could have been a great nation of colored Christians. What we did was wrong. It was not right. It cannot be justified. We should not try to justify it. But people went along. Some good people fell for it and went ahead with it; and God overruled it.

I will venture there is not a population in the world where there is a larger percentage of professing Christians than among the colored people in the South. We Christian white people all have good friends among the colored people. The colored Christian people are sensing the dangers we are facing now. There is already an uprising among good, Christian colored people in the South. They are trying to fight back the subtle, Satanic disturbance we have in this country.

There has never been a time, especially in the last ten years, when the white people in the South were so eager to help the colored people build their schools and see that they get what they ought to have. All this agitation going on is not headed up by real, Bible-believing, Christian people.

These religous liberals are the worst infidels in many ways in the country; and some of them are filling pulpits down South. They do not believe the Bible any longer; so it does not do any good to quote it to them. They have gone over to modernism, and they are leading the white people astray at the same time; and they are leading colored Christians astray. But every good, substantial, Bible-believing, intelligent, orthodox Christian can read the Word of God and know that what is happening in the South now is not of God.

God gave every race something. He gave the Africans something. He gave the Chinese something that he did not give the Japanese. He gave races certain things. He chose

the Jews. They are the most wonderful people who ever lived in the world. God chose them; and God segregated them, not because they were inferior but because He had a purpose for that race.

God Almighty had a purpose for the Jewish race; and for that purpose to be carried out, He had to separate them from among the nations of the earth. God chose Israel; and through the loins of Israel, He brought us the Messiah. He gave us the Bible through Israel. The Jews have outlived all the nations. They have been scattered over the face of the earth, and they have kept their racial identity through the years. You will find the Jew in London, the Jew in New York, the Jew in San Francisco, the Jew in Tokyo, the Jew in Hong Kong. I congratulate them. I am a friend of the Jew. I believe that the Covenant that God made with Abraham holds good until this day, "I will bless them that bless thee, and curse him that curseth thee . . . ."

The Jews are back in Palestine with a Government today. God scattered them, but He brought them back to their homeland. I am for them, and I am for their homeland and for their Government. I do not agree with them about Jesus. I know Jesus Christ was the Son of God; and I know that when Jesus Christ comes back again, He will be the King of Jews and will be accepted, and a nation will be born in a day, and Jerusalem will be the capital of the world. That is all in the Bible. It is clear as day.

Yes, God chose the Jews. If you are against segregation and against racial separation, then you are against God Almighty because He made racial separation in order to preserve the race through whom He could send the Messiah and through whom He could send the Bible. God is the author of segregation. God is the author of Jewish separation and Gentile separation and Japanese separation. God made of one blood all nations, but He also drew the boundary lines between races.

Of course, in America we do not have a serious problem with the Orient. If we had as many Chinese and Japanese

as we have colored people in the South, we would run into the same problem; but we have no Oriental problem here in the South.

Some of the most wonderful people in the world are Chinese and some are Japanese; and some of the most wonderful people who ever breathed the breath of life are colored people. Every one of you white folks who are listening to me now have colored friends. I have, and I would fight for them; and you would, too. It has always been that way. Individually, we are friends. Racially, we are not at enmity; but we are separate races. We have lived here in the South through these years.

After the Civil War the colored people wanted to build their schools and churches, and white friends made financial contribution to the building of these schools and churches. Back in those days it was not easy when the white folks were paying most of the taxes – don't you colored friends forget that when you are inclined to turn away from your white friends. You colored people might also remember that your ancestors in the South who were slaves breathed an atmosphere of culture back in those pre-Civil War days. Think of what your ancestors received in such an atmosphere. Think of the religion that they learned and how they found God in slavery days. Think of those old white preachers who preached to your colored ancestors when they were slaves.

Now listen, the time has come when we ought to sit down and go to thinking some things through in this country. And you colored people listening to me and you white people listening to me ought to keep your heads cool and your minds clear and your hearts warm and keep up these friendly relations we have had through the years. Do not let this outside, Communistic, Hellish influence disturb the friendly relation we have had in the South. The situation in the South had been better in recent years than it had ever been; and all of this agitation is going to set this country back in the South for twenty-five to fifty years. We are headed that way. We ought to rise up and begin to face this thing like we ought to face it as neighbors and friends. Every one of you colored

people know your white friends. And you white people know your colored friends. We have some of them, and we would not let anybody mistreat them if we could help it; and they would not let anybody mistreat us. It has always been that way in the South.

But racially, we have separation in the Bible. Let's get that clear. Any race has a right to come to America. We do not mean that when we came over here we wiped out the line between races. We did not do that. We should have let the Africans stay in Africa instead of bringing them here for slaves, but did you colored people ever stop to think where you might have been if that had not happened? Now, you colored people listen to me. If you had not been brought over here and if your grandparents in slavery days had not heard that great preaching, you might not even be a Christian. You might be over there in the jungles of Africa today, unsaved. But you are here in America where you have your own schools and your own churches and your own liberties and your own rights, with certain restrictions that God Almighty put about you – restrictions that are in line with the Word of God. The Jews have lived a separated race. They have been separated from the other races of the world. They have been miraculously preserved. Now they have a homeland. They are back there today, and what a wonderful thing is happening.

The time has come when we good folks down here in the South – the good colored people and the good white people – need to use our heads. We should not let this outside agitation disturb us down here. Now, listen just a minute. You colored people are entitled to good schools. You ought to have them. I would like for you to remember something. Just remember that the South went through reconstruction and had a hard time. It was not easy. Then remember something else, too. When your ancestors were slaves in the homes of these Southern people, they got a breath of culture that they could not have gotten even in the schoolrooms of America. They heard the old-time preachers. I have said many times that the greatest preachers who have lived since the Apostolic days were the preachers of the South – the preachers who

preached to the colored people. And back there the slaves had the Gospel. They heard it and were converted. They were saved.

Many of these slave owners were godly, spiritual people. I remember hearing about when John Jasper was converted at a corn husking and began to shout. His master said, "John, what is the matter?" He said, "I have just been converted — been saved." "Well," he said, "I am a Christian, too. We are brothers." They shook hands. He said, "Now, John, you take a day off and go around and tell all the colored folks how you found the Lord. Take a day off and tell them."

Back in the old days when I began to preach, over sixty years ago, nearly every church I went to had a few old colored people who never did leave. They said, "We want to stay here. We got converted here and want to stay here." They were encouraged, and the white people helped build their churches. They stood by them through the years.

Now, you intelligent-thinking colored people know that you are with your friends. Do not lose your friends. Your friends are not somewhere else. They are right down here in this country. Remember that now.

I have no axe to grind. I would like to tell you something. We had planned to build a school, just like Bob Jones University, here in the South for colored people. We wanted to build it. But we have run into this agitation now that makes it difficult, and the years are piling up. I do not suppose I will ever be able to build it. We wanted to build a great school where colored people could come and get all the culture that we offer here at Bob Jones University. We would not have faced the problems that are faced where there is integration. We wanted to build a place where Christian colored people could get their education in an atmosphere where their talents in music and speech and art and all could be preserved and handed down. We wanted to build that kind of a school. We had that in mind until all this agitation started. Now we have a mess on our hands, and it is spreading out over this country.

You white folks listen to me. Just remember the good, old, colored friends you had in the days gone by. I remember mine. I remember that old, colored woman who was with my wife's grandmother when she died. She used to be a nurse in the home way back in slavery days. I remember how my wife's grandmother said the happiest day she ever saw was when the slaves were freed. She owned hundreds of them, and she said, "I was so happy. I was afraid some of them would be lost; and I felt that God might hold me accountable." That spirit represented the Old South.

You say slavery was not right. Well, I say it was not right. I say the colored people should have been left over in Africa, and we should have sent missionaries over there and got them converted. That is what we should have done. But we could not have converted them as fast that way; and God makes the wrath of men to praise Him. They were brought over here, and look what they have. They have their churches. They have a freedom here they do not have anywhere else in the world. They have an understanding here. Let's not wipe out the line of understanding.

Now, I am appealing to you colored people and to you white people. Let's use our heads. Let's be intelligent. Let's not try to kick the Bible off the center table. Keep your Bible where it belongs. When they tell you that God Almighty is not the author of the boundaries of nations, you tell them that is wrong. You tell them it is perfectly clear in the Bible that God made of one blood all nations but that He also fixed the bounds of their habitation. There is nothing unscriptural about that.

Listen just a minute. We are trying to bring a few people from other lands here to Bob Jones University so we can educate them and help them. We have two Chinese gentlemen teaching here in this school. They are Christian men. They are intelligent men, and they understand what we are doing. They know where we are going. We honor them and respect them.

There is no problem here. But it could be a problem. It could be a problem in California. It could be a problem

anywhere. Whenever you get a situation that rubs out the line that God has drawn between races, whenever that happens, you are going to have trouble. That is what is happening today in this country. All this agitation is a Communistic agitation to overthrow the established order of God in this world. The Communistic influence is at work all about us. Certain people are disturbing this situation. They talk about the fact that we are going to have one world. We will never really have one world until this world heads up in God. We are not going to have one world by man's rubbing out the line that God has established. He is marking the lines, and you cannot rub them out and get away with it.

The established order cannot be overthrown without having trouble. That is what wrecked Paradise. God set up the order of Paradise. He told Adam and Eve how to live and what food to eat and what not to eat. He drew the lines around that Garden; and when Adam and Eve crossed over the lines of God, thorns grew on roses. The first baby that was born was a murderer and killed his own brother. So it has gone down through the ages. It is man's rebellion (due to the fall) against a Holy God to overthrow the established order of God in this world.

Now I can sit down with any Christian Japanese, any Christian Chinese, any Christian African, etc., anywhere in the world and as a Christian have fellowship. That is a different relationship. A Christian relationship does not mean a marriage relationship. You can be a Christian and have fellowship with people that you would not marry and that God does not want you to marry and that if you should marry you would be marrying outside the will of God. Why can't you see that? Why can't good, solid, substantial people who do not have any prejudices and do not have any hatred and do not have any bitterness see this? Let's approach this thing in a Christian way. Let's make the battle a Christian battle. Do not let people run over you by coming along and talking about the Universal Fatherhood of God and the Universal Brotherhood of man. There is no Universal Fatherhood of

God and Universal Brotherhood of man. There is not a word about that in the Bible.

We have three classes in the Bible. We have the Jew (a segregated race), the Gentile (and this includes everybody else), and the Church of God (meaning the Body of Christ, as it is used here). In the Church of God there are no Jews, no Gentiles, no white folks, no black folks. We are one in Christ. There is no trouble between a colored Christian and a white Christian. They operate as individuals and deal with each other as Christians who have their citizenship in Heaven. Up in Heaven there will be no boundaries. We will be one forever with Christ. But we are not one down here, as far as race is concerned and as far as nations are concerned. God said so, and Paul made it clear when he preached at Athens in the midst of Athenian culture. He said that God ". . . hath made of one blood all nations of men . . . ." But God has also done something else. He has fixed the bounds of their habitations.

A lot of this agitation comes from evangelists of a certain type who have never gone into this situation but who are going up and down rubbing out the line between those who believe the Bible is the Word of God and those who believe the Bible just contains or may contain the Word of God. They do not get all of this "hot-air" stuff out of the Bible. It is not in the Bible. It is nothing in the world but "hot-air" glamour with a sentimental, soap-bubble, anemic kind of a religion that is not in the Word of God.

I have been in this business all these years. I know something about it. I know what the Word of God teaches. I know what the great evangelists believed. I know how they stood through the years. We are facing serious dangers today — more serious than we can ever imagine. May God help us to see it and understand it and to be true to Him.

When you run into conflict with God's established order racially, you have trouble. You do not produce harmony. You produce destruction and trouble, and this nation is in the greatest danger it has ever been in in its history. We are facing dangers from abroad and dangers at home, and the reason

is that we have got away from the Bible of our forefathers. The best Christians who ever put foot on this earth since the Apostolic days were the men and women in America back in the old days. Some of them owned slaves, and some of them did not; and some of them were slaves, and some of them were not. Back in those days they believed the Bible, and God called this nation into existence to be a witness to the world and to be true to the Word of God. Do not let these religious liberals blowing their bubbles of nothing over your head get you upset and disturbed. Let's get back to the Word of God and be sensible.

You white folks and you black folks listening to me this morning, if you are Christians, we are one in Christ. If you are yellow or red or whoever you are, if you are Christians, we are one in Christ. We can get along together as Christians, and we had better stand together as Christians.

You preachers, listen to me. I know what is going on. We are facing dangers in America. Enemies are being made now that are dividing this country as it has never been divided in its history. We are facing the greatest dangers we have ever faced, and the religious liberals are riding in now on the crest of a wave of what seems to be popular.

If you are a Christian, you are not going to mistreat anybody. You will not mistreat a colored man or a white man or anybody else. Individually, we are one in Christ; but God has also fixed the boundaries of nations, and these lines cannot be rubbed out without having trouble. The darkest day the world has ever known will be when we have one world like they are talking about now. The line will be rubbed out, and the Antichrist will take over and sit down on the throne and rule the world for a little while; and there will be judgment and the cataclysmic curses found in the book of Revelation. We are going to face all this. May God help us to see it and to be true and faithful to Him.

"Our heavenly Father, bless our country. We thank Thee for our ancestors. We thank Thee for the good, Christian people – white and black. We thank Thee for the ties that

have bound these Christian white people and Christian colored people together through the years, and we thank Thee that white people who had a little more money helped them build their churches and stood by them and when they got sick, they helped them. No nation has ever prospered or been blessed like the colored people in the South. Help these colored Christians not to get swept away by all the propaganda that is being put out now. Help us to see this thing and to understand God's established order and to be one in Christ and to understand that God has fixed the boundaries of the nations so we would not have trouble and misunderstanding. Keep us by Thy power and use us for Thy glory, for Jesus' sake. Amen."

Letterhead of Department of the Treasury
District Director Internal Revenue Service
Columbia, S. C.

Bob Jones University, Inc.
Greenville, S. C. 29614

Gentlemen:

The Internal Revenue Service, after careful study, has concluded that private schools with racially discriminatory admissions policies are not legally entitled to Federal tax exemption and that contributions to such schools are not deductible as charitable contributions. This position is applicable to all private schools in the United States at all levels of education. The enclosed statements discuss this position in greater detail.

The Service will continue to recognize the tax exempt status of a private school where it has adopted and administers, or will adopt and administer, a nondiscriminatory admissions policy in good faith, and publicizes the fact within its community. The benefits of tax exempt status and deductibility of contributions will, however, be challenged by the Service where a private school practices racial discrimination in its admissions policy.

We are now reviewing all rulings and determinations issued to private schools in the United States in the light of this position. With but few exceptions, our present files on educational organizations do not contain information on admissions policies and related facts. Thus, this inquiry is being directed to all schools having Service rulings of tax exemption.

To enable us to determine your correct status, we ask that you answer the questions on page two of this letter. You may retain for your files the enclosed copy of this letter. If you wish, you may submit any documents you feel will have a bearing on the matter. Your reply should be made over the signature of a principal officer of your organization and should be returned to this office in the enclosed envelope within thirty days. If you are in process of clarifying or modifying your admissions policy, you may request an extension of time in which to supply additional information.

Your reply will be evaluated promptly, and you will be advised of our findings. If it appears that your exemption is brought into question, you will have an opportunity to present additional evidence and be heard before a decision is reached.

Thank you for your cooperation.

(Signature omitted)

Information to be Submitted to Internal Revenue Service

1. What are the present policies and practices of your school on admissions? ☐Racially Nondiscriminatory ☐Racially Discriminatory ☐Other (Please explain.)

2. If you have a racially nondiscriminatory admissions policy, explain the manner in which it has been widely publicized. (Please furnish pertinent information from your catalog, local newspaper or other similar publications, and other supporting information demonstrating wide dissemination.)

3. If you are undertaking to modify or clarify your ad-

missions policy, explain your new or modified policy and your proposed methods of publicizing it. If you have already taken action, please furnish copies of any documents by which your policy is being established and publicized.

I declare that I have examined this questionnaire, including the accompanying statements, and to the best of my knowledge and belief it is true, correct and complete.

Date Signature of Officer Title

Enclosures:
News Release dated 7/10/70
News Release dated 7/19/70
Self-addressed envelope

News Release
Internal Revenue Service, Washington, DC 20224

IRS Announces Position on Private Schools

Washington, D.C. — The Internal Revenue Service announced today that it has been concluded it can no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor can it treat gifts to such schools as charitable deductions for income tax purposes.

The Internal Revenue Service will proceed without delay to make favorable rulings of exemption immediately available to private schools announcing racially nondiscriminatory admissions policies and to deny the benefit of tax-exempt status and deductibility of contributions to racially discriminatory private schools.

The Service said that favorable rulings given to private schools in the past will remain outstanding where the school is able to show that it has racially nondiscriminatory admissions policies.

All private schools with favorable rulings outstanding will receive a written inquiry from the District Director of Internal Revenue and it is anticipated that in most instances evidence

of a nondiscriminatory policy can be supplied by reference to published statements of policy or to the racial constituency of the student body.

Where a school fails to establish that it has a racially nondiscriminatory admissions policy, an outstanding ruling of exemption will be withdrawn. However, a school seeking to clarify or change its policies and practices will be given a reasonable opportunity to do so in order to retain its ruling of federal tax exemption. In any event, full opportunity to present evidence and be heard will be provided in accordance with usual revenue procedures and the right to appeal to the courts will be available. Similar principles will be followed in acting upon requests made by new schools for rulings.

4:00 PM, EDT
7/10/70

News Release

Internal Revenue Service, Washington, DC 20224

IR-1052

Washington, D.C. — The Internal Revenue Service today announced it has issued favorable rulings of exemption to six private schools that have announced racially nondiscriminatory admissions policies. The schools are located in five different southern states.

The rulings were the first to be issued under the statement of position announced by the IRS on July 10 concerning the tax status of private schools. Other applications for exempt rulings, pending at the time of the announcement, which meet the stated standards will be processed expeditiously, the IRS said.

The IRS said the written inquiry on admissions policies to be sent to all private schools that currently hold favorable tax exemption rulings is now being developed. Inquiry letters are expected to be sent out by the 58 IRS district directors within a few weeks.

The six schools to which new favorable rulings of exemp-

tion were issued had provided the IRS complete information that they had a racially nondiscriminatory admissions policy announced within their respective communities. The schools are:

Nathanael Green Academy, Inc.
Siloam, Georgia

The Heritage School, Inc.
Newnan, Georgia

The Gaffney Day School
Gaffney, South Carolina

Desoto School, Inc.
Helena, Arkansas

Southeast Education, Inc.
Dothan, Alabama

Pamlico Community School
Washington, North Carolina

In response to questions it has received, the IRS also issued a more detailed explanation of its July 10 statement of position on the tax status of private schools. In that statement the IRS said, in the future, favorable rulings of tax exemption would be available where schools announced racially nondiscriminatory admissions policies.

The IRS said its July 10 statement does not affect a school's ordinary admissions policies which have no relation to race. The IRS specifically added that a school's ordinary academic standards will not be affected.

The IRS explained that its July 10 statement is applicable to all private schools throughout the United States, except as limited by the order of a three judge Federal District Court in the District of Columbia, in Green v. Kennedy and Thrower. That court has ordered that rulings be issued in Mississippi only under terms and conditions approved by the court.

In its initial nationwide review of the present status of private schools, the IRS said that where a school has adopted

and publicly announced a racially nondiscriminatory admissions policy, it will assume, in accord with normal procedures in requests for rulings, that such policy has been adopted and will be maintained in good faith. If subsequent examination by an IRS field office indicates that a school has not administered such a policy in good faith, the tax exempt status of the school will be challenged.

The IRS also said that, should an existing ruling of a private school be revoked as the result of such a challenge, persons contributing to the school will be allowed to deduct contributions made prior to the date of the public announcement by the IRS of the revocation. This follows the usual IRS rules and procedures on contributions.

The IRS added that its statement of position on racially nondiscriminatory admissions policies would be applicable to all private schools, whether church related or not. Selectivity of students, as by a religious seminary, having no relation to racial discrimination would not be inconsistent with the IRS statement of position.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

Personally appeared before me John E. Fowler, who first being duly sworn states and deposes that he is a Certified Public Accountant with the firm of Turnbull, Orr and Fowler, Chattanooga, Tennessee, and is a member of the American Institute of Certified Public Accountants.

For a period in excess of twenty-five (25) years, the firm of Turnbull, Orr and Fowler has been employed by Bob Jones

University, Greenville, South Carolina, Plaintiff in the above-entitled action, and has as a consequence of said employment examined the books, records, and financial statements of Bob Jones University. I am personally familiar with the books, records and financial statements of Bob Jones University.

The books and records of Bob Jones University as maintained presently and over a period of years have not been maintained for the purpose of complying with any requirements which would be necessary should the University be required to file Federal income tax returns. The University does not have a plant ledger showing costs reserved for depreciation and remaining life of its useful assets. In my opinion, in order to figure income or loss for Federal income tax purposes, it will be necessary to assign a value to the assets of the University and to apply acceptable depreciation schedules to such assets. In order to establish the value of the University's assets, all available records for a large number of years would have to be examined and re-examined. A major portion of the physical plant of Bob Jones University was built and equipped in the years of 1946 and 1947 and records as to these assets would have to be examined from those years to the present.

From my knowledge of the books and records of Bob Jones University, I am of the opinion that in many instances, sufficient detailed records are not available.

In my opinion, the only alternate method of establishing the value of the University's assets for Federal income tax purposes would be to employ an appraisal company to make an appraisal of the University's assets. In my opinion, such an appraisal would be very expensive and time consuming.

From the books and records of the University which are presently available, I estimate the Federal income tax liability of the University for the fiscal year ending May 31, 1971, would be approximately $750,000 if the University had been required to pay Federal income tax. I am informed and believe that for the current fiscal year ending May 31, 1972, the Federal income tax liability of the University would be

in excess of $500,000 should the University be required to pay Federal income tax.

Bob Jones University does not employ accountants versed in Federal income tax law or regulations and in my opinion that should the University be required to file Federal income tax returns, it would be necessary for the University to employ at least two additional persons well-versed in Federal income tax law and regulations. In my opinion the cost to the University in employing said additional persons would be approximately $25,000 per year.

I have considered and studied various accounting and tax questions which would arise should the University be required to file Federal income tax returns. In my opinion, the Internal Revenue Code, regulations issued pursuant thereto and case law do not provide adequate guidelines as to the proper procedures to be used. Therefore, I would anticipate and expect considerable controversy to arise regarding appropriate accounting procedures to be used.

Based upon my knowledge of the present books and records of Bob Jones University and the requirements of filing Federal income tax returns, and should the firm of Turnbull, Orr and Fowler be selected to prepare Federal income tax returns for the University, that the fee for filing the first year return would be between $80,000 and $100,000. In my opinion it would require at least one year before such a Federal income tax return could be prepared.

In my opinion the financial burden which would be imposed on the University, should the University be required to file Federal income tax returns and pay the required tax would be such that it would seriously jeopardize its continued operation.

(Signature and Jurat omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

Personally appeared before me Bob Jones, Jr., who first being duly sworn, states and deposes:

I am Chairman of the Board of Trustees of Bob Jones University, Greenville, South Carolina, Plaintiff in the above-entitled action. I am familiar with the beliefs and principles on which Bob Jones University has been founded and continuously operated by its Board of Trustees.

I believe that God made of one blood, all nations of men for to dwell on all the face of the earth and has determined the bounds of their habitation (Paul's Sermon on Mars Hill). I believe that God intended that the various races of men should live separate from each other. I believe that the inter-marriage of the members of different races is contrary to the will of God and that any action or policy that I or Bob Jones University might follow or adopt which would tend to lead to or promote the inter-marriage of the races would be contrary to the Word of God and sinful. I further believe that to admit Negro students to Bob Jones University at the present time would tend to lead to and would promote the inter-marriage of the races contrary to the Word of God and the religious beliefs and principles of Bob Jones University.

My religious beliefs and principles and those of the University prohibit me from advocating any type of change in the admissions policy of the University.

(Signature and Jurat omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT

State of South Carolina
County of Greenville

Personally appeared before me Wesley M. Walker, who first being duly sworn, states and deposes:

I am a member of the law firm of Leatherwood, Walker, Todd & Mann of Greenville, South Carolina and our firm is counsel for Bob Jones University, Plaintiff in the above captioned matter. On April 21, 1971, together with J. D. Todd, Jr. and O. Jack Taylor, Jr., who are members of our law firm, I met with representatives of the Internal Revenue Service in Washington, D. C., concerning the tax exempt status of Bob Jones University. The representatives of the Internal Revenue Service who were present at this meeting included Randolph W. Thrower, who was then the Commissioner, K. Martin Worthy, Chief Counsel of the Internal Revenue Service, and William H. Connett, an Assistant to the Commissioner. According to my recollection there were present two additional representatives of the Internal Revenue Service, but I did not write down their names. At this meeting it was clearly indicated that the admissions policy of Bob Jones University was such that its tax exempt status was in serious jeopardy and this was the primary subject matter of the meeting. A short time after the aforesaid meeting, I requested the opportunity to be able to confer with officials of Bob Jones University to investigate any possibility that there might be a change in the University's admissions policy. At that time University officials were out of the United States and it was some time before I was able to arrange a conference with our client. During this period of time and prior to his leaving, I advised Commissioner Thrower that after discussing the matter with officials at the University, I would telephone

Mr. William H. Connett, the above mentioned Assistant to the Commissioner, to advise him of the results of my conference. On or about July 29, 1971, I conferred with officials of Bob Jones University and as a result, I was informed that there would be no change in the admissions policy of Bob Jones University. Thereafter, I telephoned Mr. William H. Connett and advised him of the results of my conference with officials of the University and further requested a conference with the Defendant, Johnnie M. Walters, Commissioner of Internal Revenue, so that counsel for Bob Jones University would be able to make clear the University's position to the new Commissioner. I am informed that on August 11, 1971, Mr. William H. Connett attempted to telephone me and that at such time I was not available. On August 12, 1971, I telephoned Mr. Connett in Washington returning his telephone call of the previous day. I was informed by Internal Revenue personnel in Washington, D.C., that Mr. Connett was in Atlanta, Georgia, at the Office of the Internal Revenue Service there. I telephoned Mr. Connett at the Internal Revenue Service in Atlanta, Georgia, and was able to reach him in the Office of the District Director of Internal Revenue in Atlanta, Georgia. During my telephone conversation with Mr. Connett, he advised me that decision had been made to revoke the tax exempt status of Bob Jones University and that the University would receive immediately in the due course of the mails a letter from the District Director of Internal Revenue in Atlanta, Georgia, revoking the University's tax exempt status. I am informed that further attempts were made to contact the Defendant, Johnnie M. Walters, Commissioner of Internal Revenue, for the purpose of obtaining a conference at which time counsel for the University would be allowed to make clear the University's position. I am further informed that as a result of these attempts a conference was held in Washington, D.C., on September 8, 1971, at which time the Commissioner of Internal Revenue informed counsel for Bob Jones University that the process of the Internal Revenue Service would immediately be resumed to revoke the tax

exempt status of the University and that the University would be immediately notified by the District Director concerning the matter.

(Signature and Jurat omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT

State of South Carolina
County of Greenville

Personally appeared before me Fletcher C. Mann, who, after being duly sworn, deposes and states as follows:

The deponent is a member of the law firm of Leatherwood, Walker, Todd & Mann of Greenville, South Carolina, and, as such, is one of the attorneys for Bob Jones University of that city. On Friday, August 13, 1971, in a conference with certain members of his law firm, the deponent learned that the tax exempt status of Bob Jones University was in jeopardy and, by reason of the admissions policy of said University, the revocation of the tax exempt status of said University had been, or was then being, considered by the Internal Revenue Service and the administrative process within the Internal Revenue Service had been, or was then being, expedited to effectuate said purpose. As one of the attorneys for Bob Jones University, the deponent immediately attempted to contact the Honorable Johnnie M. Walters, Commissioner of Internal Revenue, by telephone but could not reach him until Monday, August 16, 1971.

In a telephone conference with Commissioner Walters on Monday, August 16, 1971, the deponent requested a delay by the Internal Revenue Service until such time as the deponent could discuss with appropriate officials of Bob Jones University the admissions policy of that institution and the

requirements and standards established by the Internal Revenue Service with respect to the granting of a tax exempt certificate. The deponent thereafter advised Commissioner Walters of the absence from Greenville of Dr. Bob Jones, Jr. and of the inability of the deponent to immediately discuss said matters with the officials of the University. The deponent was requested by Commissioner Walters, by reason of the urgency of the matter, to immediately advise him of the position of the University concerning said matters as soon as the deponent could discuss the same with its officials.

Having been advised on August 31, 1971, of the return to Greenville of Dr. Bob Jones, Jr., the deponent on September 1, 1971, conferred with officials, including Dr. Bob Jones, Jr. of the University, concerning its admissions policy and the imminence of the revocation of its tax exempt status. Following discussions of the matter with officials of the University, the deponent arranged a meeting with Commissioner Walters at his office in the Internal Revenue Building, Washington, D.C., for Wednesday, September 8, 1971. At that time, the deponent met and discussed with Commissioner Walters the admissions policy of Bob Jones University and the standards required for the maintenance of its tax exempt status. The deponent was advised during the discussion that the policy of Bob Jones University relating to admissions did not, in the opinion of the Commissioner, meet the standards or guidelines established by the Internal Revenue Service for tax exempt status; that in view of the urgency of the matter, the administrative processes of the Internal Revenue Service for notice to the University of the revocation of its tax exempt status would be resumed and the University would promptly hear from the District Director of Internal Revenue in Atlanta, Georgia concerning said matter.

(Signature and Jurat omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

MOTION TO DISMISS

The defendant, John B. Connally, Jr., Secretary of the Treasury and Johnnie M. Walters, Commissioner of Internal Revenue, move this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, for an order dismissing the plaintiff's complaint on the grounds that:

1. This Court lacks authority to grant the relief requested because the provisions of 28 U.S.C., Section 2201 forbid the granting of a declaratory judgment with respect to Federal taxes.

2. This Court lacks jurisdiction to grant the relief sought in that Section 7421(a) of the Internal Revenue Code of 1954 specifically prohibits the court from enjoining the assessment and collection of Federal taxes.

3. This Court lacks jurisdiction to grant the equitable relief sought because the plaintiff has an adequate remedy at law in that it may litigate any proposed deficiency in income taxes before payment in the United States Tax Court or bring an action for refund in the Federal Court after payment of income or other Federal taxes assessed.

4. This Court lacks jurisdiction to grant the equitable relief sought in that the plaintiff has not exhausted the administrative remedies available to it before plaintiff's ruling of exemption may be revoked as prescribed for by Revenue Procedure 68-17, 1968-1 Cum. Bul. p. 806 and Revenue Procedure 69-3, 1969-1, Cum. Bul. p. 389.

5. This Court does not have jurisdiction over the persons of the defendants inasmuch as this suit is, in fact, one against the United States, and, as such, is barred by sovereign immunity.

6. The complaint fails to state a claim upon which relief can be granted.

(Signature and Certificate of Service omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Personally appeared before me William H. Connett, who first being duly sworn, states and deposes:

I am Assistant to the Commissioner of Internal Revenue and in such capacity act as principal spokesman for the Commissioner on matters relating to the administration of the exempt organizations provisions of the Internal Revenue Code.

On July 10, 1970, the Internal Revenue Service announced that it had been concluded that the Service could no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor could the Service treat gifts to such school as charitable contributions. The announcement went on to state that the Service would proceed to deny the benefit of tax-exempt status and deductibility of contributions to racially discriminatory private schools. A copy of the announcement is attached as Exhibit A.

The announcement also stated that all private schools with outstanding favorable rulings would receive a written inquiry from the District Director of Internal Revenue and that, where a school failed to establish that it already had or would adopt a racially nondiscriminatory admissions policy, the outstanding ruling of exemption would be withdrawn.

On November 30, 1970, the Service mailed a letter of inquiry to each school which our records showed had an individual ruling recognizing it tax-exempt. The letter notified the addressee of the Service requirements of a racially nondiscriminatory admissions policy as a condition of continued recognition for tax exemption and asked each school to furnish specific information regarding its admission policy within thirty days. Such a letter of inquiry, copy attached as Exhibit B, was mailed to Bob Jones University, Inc. By letter dated December 30, 1970, copy attached as Exhibit C, the University replied that it did not admit black students.

At the time this response was received, the district offices had not been given instructions for the processing of replies to the letter of inquiry. All replies were being held in suspense until the instructions were issued.

Before these instructions were issued to the district offices, I became aware that the University might adopt a racially nondiscriminatory admissions policy. Accordingly, I requested the District Director of Internal Revenue, Atlanta, Georgia, the official with responsibility for exempt organizations matters in the State of South Carolina, to defer action on the University's response pending advice from me.

In late July 1971, I received a telephone call from Mr. Wesley Walker, attorney for the University, who advised me that the Board of Trustees of the University was not inclined to adopt a racially nondiscriminatory admissions policy. Mr. Walker asked for the opportunity, nevertheless, to confer with the Commissioner of Internal Revenue about the matter. Following discussions with the Commissioner, I spoke by telephone with Mr. Walker on August 12, 1971, and advised him that we did not believe that any useful purpose would be served by a conference with the Commissioner at that time. I further advised Mr. Walker that the office of the District Director of Internal Revenue, Atlanta, Georgia, would proceed to process the University's response to the letter of inquiry and in due course would contact the University. Following the telephone conversation, I orally advised represen-

tatives of the District Director that they could process the University's response.

In the next few days, the Commissioner advised me that he had been contacted by Mr. Fletcher C. Mann, a member of the same law firm as Mr. Walker, and that I should again instruct the Atlanta district to withhold any action in processing the University's response. I so advised the appropriate District personnel.

On September 8, 1971, the Commissioner advised me that he had met with Mr. Mann and it appeared unlikely that the University would adopt a racially nondiscriminatory policy. Unless we received further advice from the University or its representatives within the next few days, I intended to tell the District Director that he need no longer defer processing the University's response. However, on September 10, 1971, I was notified that the University had applied for an injunction in this matter and, as a result, the District Director has been advised to continue to withhold action on the University's response.

If the District Director is instructed to process the University's response, the following procedures which have and are being used in all other such cases would be followed.

A representative of the District Director would contact the University or its representatives by telephone and attempt to elicit conformance with Service requirements. The University would also be offered the opportunity of a conference at some mutually convenient date with Service representatives in either Columbia or Atlanta. Any reasonable delay in arranging the conference would be permitted.

At the conference, the Service representatives would explain the requirements concerning a nondiscriminatory admissions policy and again attempt to elicit conformance. If the organization requested a reasonable extension of time such as thirty days in which to consider possible conformance, the extension would be granted.

If the organization made clear that it would not conform to the requirements of a racially nondiscriminatory admissions

policy and waived the right to a conference, the District Director would send the organization a letter stating that because of the school's refusal to meet the requirements for exemption from Federal income tax, he was proposing to recommend to the Assistant Commissioner (Technical) that the advance assurance of deductibility of contributions to the school be suspended and also proposing to revoke the ruling recognizing the organization as tax exempt.

Proposal to Suspend Advance Assurance of Deductibility of Contributions

As to the proposal to suspend advance assurance of deductibility of contributions, the notice would advise the organization that it might, within ten days, submit a written protest to the action and be afforded a conference in the District office. If, after protest and conference, the District Director still believed that there was serious doubt concerning the organization's continued qualification to receive deductible contributions, he would notify the organization that he was recommending to the National Office of the Internal Revenue Service that advance assurance be suspended pending final determination of the status of the organization.

If the National Office was prepared to concur in the District Director's recommendation, it would contact the organization and offer it a conference in the National Office. A reasonable period for submitting any information relevant to the issue would be afforded the organization.

In the event the National Office concurred in the recommendation, the District Director would notify the organization of the decision and would also inform it that a suspension of advance assurance of deductibility of contributions would be published in a Technical Information Release, followed by an appropriate announcement in the Internal Revenue Bulletin.

If, at any time after the suspension of advance assurance, the District Director found that the organization was qualified to receive charitable contributions deductible by the donors,

he would request the National Office to rescind the suspension action.

Proposal to Revoke Recognition as Exempt

As to the proposal to revoke recognition of the organization as tax-exempt, the notice would advise the organization of its right to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its right to a district office conference. The organization would generally be afforded thirty days in which to respond to this letter and also be afforded a reasonable period of time in which to arrange a mutually acceptable conference date, if a conference were requested.

In the event the organization agreed with the proposed action or if no protest was filed, the District Director would issue a determination letter revoking the ruling recognizing the organization as tax-exempt.

If, after considering the organization's protest and any information developed in conference, the District Director maintained his position and the organization did not agree, the file and protest would be referred to the National Office. The organization would be notified of this referral and be afforded the opportunity for a conference in the National Office. Alternately, the organization could waive its rights to a district office conference and request referral of the matter directly to the National Office. After the file was received in the National Office and reached for consideration, a mutually agreeable date for the conference would be arranged. Several months may elapse from receipt of the file in the National Office to the scheduling of a conference. Following the conference, the organization would be provided a reasonable period of at least thirty days in which to submit additional information, facts or arguments in support of its claim to continued recognition as exempt.

After the organization had been afforded its appeal rights in the National Office, if requested, and all information in the files had been reviewed, the National Office would pre-

pare a memorandum advising the District Director of its conclusions. If the District Director were advised that the National Office concurred in the proposed revocation, the District Director would prepare and issue a revocation letter to the organization.

In the event a revocation letter is issued, the appropriate Internal Revenue Service personnel would determine what taxes are due and issue notice of proposed assessment following revenue procedures applicable to assessment and collection.

(Signature and Jurat omitted)

The announcement of the Internal Revenue Service dated July 10, 1970, attached as Exhibit A to the Affidavit of William H. Connett, has been reproduced previously in this Appendix at Page A-38.

The letter from the District Director, Internal Revenue Service, Columbia, South Carolina, to Bob Jones University, dated November 30, 1970, attached as Exhibit B to the Affidavit of William H. Connett has been reproduced previously in this Appendix at Page A-36.

Letterhead of Bob Jones University
Greenville, S. C.

December 30, 1970

District Director
Internal Revenue Service
901 Sumter Street
Columbia, South Carolina 29201

Dear Sir:

Re: Your letter of November 30, 1970 (400-EO)

Bob Jones University has received your letter of November 30, 1970, stating that it is now the policy of the Internal Revenue Service to revoke the tax exempt status of private schools which otherwise qualify if such schools do not adopt a racially non-discriminatory admissions policy. You ask that we reply to certain questions set forth in your letter. We do

not believe an adequate reply can be made on the form you supplied, thus we are writing this letter in reply.

Bob Jones University is governed by a Board of Trustees, who do not believe it is for the best interest of the school or for the best interest of its students to have an open admissions policy at the present time. This is no recent policy change, and this school was not founded to provide some way to avoid the effects of government enforced intergration of the schools. Bob Jones University has been in existence for over 40 years and matriculates approximately 4,500 students. Those students are from every state in the Union and from 20 to 30 foreign countries each year. The University has no Blacks in its student body, and it is the unanimous conviction of this Board that the University shall not enroll Blacks. These convictions on the part of the Board of Trustees, which are of long standing, in no way change the status of Bob Jones University as a non-profit religious and educational institution. It always has been and is now a non-profit institution devoted to furnishing Christian education to its students in line with the stated purpose in its Charter:

The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combatting all atheistic, agnostic, pagan, and so-called scientific adultorations of the Gospel; unqualifiedly affirming and teaching

> the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

The convictions of the Board and Administration of Bob Jones University are now and have always been that this institution should not seek or accept financial grants from the Federal Government, and we have consistently refused to sign the Statement of Compliance with the Civil Rights Act since to do so would be to sign away the authority of this Boad to operate a religious institution in line with its declared purposes and give to the United States Government the control of the policies of the institution.

Bob Jones University is operated exclusively for religious and educational purposes as set forth in the Internal Revenue Code. It has enjoyed a tax exempt status as a religious and educational institution for over 40 years purely and simply because it was an educational and religious institution. It has graduated thousands of well-trained Christian men and women who have become outstanding citizens in their communities and leaders in various walks of life. It might be pointed out in passing that this institution seeks always to be loyal to the Constitution of the United States and to foster love of country and patriotism. We have had on this campus no anti-war demonstrations, no riots, no flag burnings, and no revolutionary propaganda; and we would not tolerate any of these at Bob Jones University.

Bob Jones University does not indulge in promoting racial ill will; but, on the contrary, believes in and advocates in every way possible a feeling of reconciliation between the races. No individual, because of race, is denied admission to any religious service or secular program on this campus and open to the general public. The admission policies of the museum and art gallery (a tremendous cultural contribution of the University to the entire area) are applied without regard to race; and no racial consideration is involved in the gallery tours conducted for the children of the public schools, and these are offered in the interest of and in cooperation with scores of public schools annually. But because of religious belief and other reasons as well, the University does not feel it is wise to have black students in its student body.

It is not felt that this policy is discriminatory in the legal sense since it in no way involves governmental action. It is the feeling of the Board of Trustees that a black Christian school similar to Bob Jones University would have every legal and moral right to refuse to accept white students and that this would not constitute discrimination against Whites.

It is the firm conviction of the Board of Trustees of Bob Jones University that any private institution has a right under the United States Constitution to determine its own admissions policies and that the Federal Government should not discriminate against such an institution because of its admissions policies. It is our belief that a tax exempt status was granted to religious and educational institutions because they were religious and educational without regard to their admissions policies. We certainly trust that upon mature consideration of the educational, eleemosynary, religious, and Constitutional questions involved, the Internal Revenue Service will not discriminate against Bob Jones University by attempting to withdraw its tax exempt status. If the Internal Revenue Service removes Bob Jones University's tax exempt status because of its admissions policies, then, by the same token, it should deny tax exempt status to any church that refuses to admit any person to membership for any reason whatsoever.

(Signature and Certificate of Service omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

District of Columbia, ss.:

Supplementing the Affidavit heretofore executed by the undersigned there are attached hereto certain documents from the Internal Revenue Service files concerning Bob Jones University.

These documents are:

Exhibit D: Copy of a letter dated December 9, 1970, signed Bob Jones, President, with a one-page enclosure entitled "A Statement From the President of Bob Jones University."

Exhibit E: A Statement from the Chairman of the Board of Trustees and the President of Bob Jones University dated September 10, 1971.

(Signature and Jurat omitted)

Letterhead of Bob Jones University
December 9, 1970

My dear Friend:

IT LOOKS AS IF BOB JONES UNIVERSITY WILL LOSE ITS TAX EXEMPT STATUS SHORTLY.

We have received from the Internal Revenue Service a notice that any institution that does not enroll black students without restriction will no longer be granted exemption from income tax and that gifts made to such institutions will no longer be tax deductible. I hope you will read very carefully the enclosed material explaining just why Bob Jones Univer-

sity does not accept black students. We are not "against" Blacks. Our Board simply does not feel it is in the best interest of either our white students or the Blacks themselves to enroll black students at the present time with conditions as they are.

If we are denied the same tax exemption privileges that other institutions have, the Executive Committee has unanimously determined to enter suit. It may cost us as much as $250,000 to sue the government, and it is a disgraceful situation that this present United States Administration, by its unfairness, puts a Christian institution in a position of having to spend the Lord's money this way. It has come to us from a rather direct source that President Nixon is solely responsible for pushing this through and that certain of the men in the Internal Revenue Service believe that this action is unfair and unAmerican and that some of their lawyers seriously doubt that it will be sustained in a court of law; but the President, according to the information that has come to us, has forced the issue.

It is most significant that there is no question of cutting off the tax exemption of institutions that are training militant Blacks, revolutionaries, Communists, and arsonists. No attempt has been made to take away tax exemptions from institutions which have Communists and revolutionists on their faculty — men and women who are seeking to overthrow America and train young people for that purpose — but the government is trying to discriminate against a Christian institution that is peaceful, patriotic, and seeking to train spiritual young men and women who will go out and make a real contribution to America and who will not drop out of society and seek to overthrow "the Establishment."

If the income tax exemption can be used to blackmail educational institutions, the next step is to use it to blackmail churches. The National Council of Churches and liberal denominations would like nothing better than to see this pressure applied to independent, fundamental, Bible-believing churches to force them "into line." We feel, therefore, that

the whole cause of Christ is at stake in this matter; and Bob Jones University is going to fight for fairness and freedom for all Christian educational institutions and churches in America.

Many of our friends have assured us that if this goes through, instead of cutting off their donations, they will double them; and I believe this represents the spirit of most of the people who support Bob Jones University. I am confident that out of this discrimination against this institution because of its religious convictions God is going to bring glory to Himself and rebuke to the tyrants in Washington.

We have until December 30 to file our statement, which must then be processed. We are going to wait until that date to file our statement if our attorney advises us to file at all. In any case, we are going to "stall" it as long as we can; and after it is filed, it will take them a few days at least to process it. THIS MEANS THAT ANY GIFTS MADE TO BOB JONES UNIVERSITY IN THE NEXT FEW WEEKS WILL BE TAX DEDUCTIBLE. I hope, therefore, our friends will give as generously as possible in these last two or three weeks of 1970 and that whatever they plan to do for us in 1971, they will do IMMEDIATELY AFTER THE FIRST OF THE YEAR SO THOSE GIFTS WILL APPLY TOWARD THEIR CHARITABLE DEDUCTIONS IN 1971. It may mean somebody is going to have to sacrifice, but Bob Jones University is sacrificing for this cause, too; and I know our friends are going to rally.

I know we can count on your prayers. Pardon this lengthy letter, but we wanted you to know the facts. Pray for us. God bless you.

(Signature omitted)

A STATEMENT FROM THE PRESIDENT OF BOB JONES UNIVERSITY

The Board of Trustees of Bob Jones University is made up of fifty godly men and women from all sections of the United States. They are unanimous in their convictions that Bob Jones University should not enroll Negro students. This Board is responsible for administering the affairs of Bob Jones University, establishing its policies; and seeing that it is operated in line with Scriptural principles.

The fact that we do not accept Blacks as students here does not mean that we are against the Negro race, that we do not love the Negro, or that we are not concerned about his spiritual welfare. I wish there were an institution like Bob Jones University established exclusively for Negroes; however, with the present emphasis in this country, Negroes would not accept a school established solely for Blacks because the whole emphasis today is on a breaking down of racial barriers which God has set up; and where God sets up barriers, He does it for human good. In fact, Paul makes this quite clear in his sermon on Mars' Hill, the first portion of which the integrationists love so to quote: "He has made of one blood all nations of men for to dwell on all the face of the earth." They never continue, however, "and hath determined the times before appointed, and the bounds of their habitation; that they should seek the Lord, if haply they might feel after him, and find him, though he be not far from every one of us."

The emphasis today is on one world, one race, one church; but this is to be a world in rebellion against God ruled by Antichrist, a mongrel race in defiance of the separation which God has put up, and an apostate church, serving Antichrist.

College years are the time when young people make their life contacts, fall in love, and get married; and we do not believe intermarriage of the races is Scriptural. That such is the purpose of the whole present emphasis is apparent from a statement from one of the leaders of the NAACP who said,

"The racial problem will not be settled in the Courtroom but in the bedroom."

We accept a few Oriental students, but we do so with a definite understanding that they will not date outside of their own race. If we took Negro students here on this same basis today, they would resent that restriction and would cry that they were being discriminated against because they were not allowed to date Orientals or Caucasians. If we had to expel a black student today for the worst possible offense – stealing, attempted rape, or something of that sort – he could cry that he was being persecuted because he was black; and we would be picketed, annoyed, and harassed. The very attitude of the integrationist today makes it impossible for us to find any basis on which we can accept Negro students without violating Christian and Scriptural principles and without being put in a position where we could be harassed, annoyed, and threatened. The Board is not going to be put in any such position.

In this as in all matters, this institution seeks to do what we believe to be right, what we believe to be Scriptural, and what we believe to be in the best interest of the testimony of this institution and the welfare of our students. It is unfortunate that some Christians have been brainwashed by the propaganda of the integrationists to the point where they feel guilty if they do not integrate, when the truth is in most cases they should feel guilty if they do integrate on a basis that violates the boundaries which God has put up.

Letterhead of Bob Jones University

September 10, 1971

A STATEMENT FROM THE CHAIRMAN OF THE BOARD OF TRUSTEES AND THE PRESIDENT OF BOB JONES UNIVERSITY.

Bob Jones University has refused to accept Negro students because we believe that interracial marriage is contrary to the Scriptures; and to throw young people together during

their college years leads to romantic attachments and to marriage.

We have a number of Oriental students, but no student – Oriental or Caucasian – dates outside his own race. With the present agitation and left-wing pressures, blacks, if enrolled, likely would complain that such restrictions were discriminatory. If they attempted to violate our policy, they would have to be expelled. Then they would cry they had been dismissed because they were black.

It is unfortunate that this attitude on the part of some blacks makes it impossible for this Christian school to accept good blacks whom we would like to help. The Executive Committee, at a fall meeting, did authorize us to permit one fine young married black – a member of our staff – to be enrolled for a Bible class. This young man wants to train for Christian service. We permit white employees, who can work it into their schedules without interfering with their work hours, to take one course each semester. He is being given the same privilege that is extended to white members of the staff.

On the basis of the Executive Committee's feelings that the University could admit a married Negro without jeopardizing its convictions against interracial marriage, one black staff member has enrolled for one class.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

PERSONALLY appeared before me Florence Post who, being first duly sworn, states:

I frequently make contributions to Bob Jones University,

Greenville, South Carolina. I plan to continue to make contributions to the University in such amounts as I am financially able to contribute. In making donations to the University, I have relied upon the advanced determination made by the Internal Revenue Service that the University is an exempt organization under the Internal Revenue Code and that I may deduct my contributions to the University in computing my federal income tax liability. Should the Internal Revenue Service revoke the tax exempt status of Bob Jones University or withdraw advance assurance that my contributions to the University will be deductible in computing my federal income tax liability, I will be forced to restrict or curtail my contributions to the University. The net effect of revocation of the University's tax exempt status or withdrawal of advanced determination of deductibility of contributions will be that the University will not receive contributions from me to the extent it would otherwise receive. Because of the frequency of my contributions to the University and my present plans for continuing frequent gifts to the University, the effect upon the University will be immediate.

(Signature and Jurat omitted)

Affidavits substantially identical to that of Florence Post were filed in support of Petitioner's Motion for Preliminary Injunction subscribed to by John McLario of Waukesha County, Wisconsin; A. L. Hayes of Mobile County, Alabama; Martin H. Bartlett of Otero County, New Mexico; Paul W. Doll, Jr. of Kings County, New York; Charles Baldwin of Columbia County, Florida; Arnold Fletcher Anderson of Dallas County, Texas; Evelyn Coffman of Fayette County, Ohio; Mrs. J. W. Stewart of Greenville County, South Carolina and Charles Loving of Franklin County, Ohio.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

Personally appeared before me Jo Ann Hatcher, who first being duly sworn states and deposes:

I am donations secretary of Bob Jones University, Plaintiff in the above captioned matter, and as such, I maintain the books and records of Bob Jones University relating to the cash donations received by the University. The following is a list of the cash amounts received by Bob Jones University as donations on a weekly basis from August 30, 1970 to August 28, 1971:

Week Beginning	*Donations*
August 30, 1970	$ 8,555.00
September 6, 1970	5,185.29
September 13, 1970	4,958.60
September 20, 1970	4,804.66
September 27, 1970	7,538.57
October 4, 1970	11,023.60
October 11, 1970	5,282.99
October 18, 1970	8,769.15
October 25, 1970	4,077.80
November 1, 1970	6,241.90
November 8, 1970	12,237.31
November 15, 1970	6,561.88
November 22, 1970	15,894.95
November 29, 1970	9,250.60
December 6, 1970	8,658.36
December 13, 1970	30,246.37
December 20, 1970	23,367.25

December 27, 1970	37,397.33
January 3, 1971	43,085.51
January 10, 1971	19,232.89
January 17, 1971	7,538.68
January 24, 1971	4, 803.27
January 31, 1971	6,416.85
February 7, 1971	5,659.23
February 14, 1971	5, 604.30
February 21, 1971	5,117.10
February 28, 1971	6,755.84
March 7, 1971	7,109.74
March 14, 1971	3,535.13
March 21, 1971	3,704.01
March 28, 1971	46,424. 36
April 4, 1971	5,404.76
April 11, 1971	3,657.32
April 18, 1971	11,456.08
April 25, 1971	4,627.91
May 2, 1971	6,137.19
May 9, 1971	7,699.24
May 16, 1971	6,123.18
May 23, 1971	4,134.25
May 30, 1971	12,867.85
June 6, 1971	6,951.00
June 13, 1971	2,165.50
June 20, 1971	5,0006.31
June 27, 1971	5,308.47
July 4, 1971	9,096.73
July 11, 1971	3, 868.39
July 18, 1971	6,222.02
July 25, 1971	2,281.30
August 1, 1971	4,837.57
August 8, 1971	4,087.16
August 15, 1971	9,180.88
August 22, 1971	4,424.45

During the period from September 1, to September 20, 1971, the University received a total of 691 individual cash gifts totaling $29,695.83

Bob Jones University has received gifts from the Nationwide Foundation as follows:

May 18, 1967	$100.00
June 16, 1967	$25.00
October 2, 1967	$100.00
December 6, 1967	$300.00
December 27, 1967	$50.00
May 4, 1968	$350.00
April 19, 1969	$100.00
October 6, 1969	$300.00
December 20, 1969	$100.00
April 24, 1970	$150.00
July 1, 1970	$300.00
August 10, 1970	$50.00
November 6, 1970	$50.00

That since November 6, 1970, Bob Jones University has received no donation from Nationwide Foundation although the University has requested that Nationwide Foundation make matching gifts to the University.

(Signature and Jurat omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

State of Tennessee
County of Fayette

Personally appeared before me Joe N. Cocke, who first being duly sworn states and deposes:

I am Chairman of the Board of Directors of Fayette Academy, Somerville, Tennessee. The Internal Revenue Service acting through the District Director, Atlanta, Georgia, revoked the tax exempt status of Fayette Academy first by withdrawing assurance of deductibility of contributions to the school and second by requiring the school to file Federal Income Tax Returns. The tax exempt status of Fayette Academy was revoked solely because it refused to publish as required by the Internal Revenue Service that it had adopted a racially nondiscriminatory admissions policy.

The school received a letter from the District Director of Internal Revenue, Atlanta, Georgia, dated January 12, 1971, a copy of which is attached. Subsequently, conferences were held at the District and National office. Officials of the Internal Revenue Service stated that the Service was irrevocably committed to revoking the tax exempt status of private schools which failed to adopt a racially nondiscriminatory admissions policy and publish that fact.

(Signature and Jurat omitted)

Leatherhead of Department of the Treasury

District Director Internal Revenue Service

Jan 12, 1971 411-1-3: WRG

Fayette Academy
Somerville, Tennessee 38068

Gentlemen:

By letter of December 3, 1970, you were notified of the suspension of advance assurance of the deductibility of contributions to your organization pending final determination of your status under Section 501 (c)(3) and 170 (c) of the Internal Revenue Code.

As you have not furnished evidence of adoption of a racially nondiscriminatory admissions policy, notice is hereby given of the proposed revocation of the ruling to your organi-

zation dated November 15, 1966, recognizing your exemption as an organization described in Section 501 (c)(3) of the Internal Revenue Code. This notice is in accordance with Revenue Procedure 69-3, Cumulative Bulletin 1968-1, 389. The undersigned has responsibility for the Southeast Region with respect to exemption rulings and revocations for organizations described in Section 501.

Your organization has the right to protest this proposed revocation by submitting a statement of the facts, law, and argument in support of your position. After filing your protest, you also have the right to a district office conference, which will be held at Memphis, Tennessee. You may, however, waive the right to a district office conference and request a referral of the matter directly to the National Office and request a conference there.

A conference at either the district or National Office would probably serve no useful purpose if you have no intention of adopting a racially nondiscriminatory admissions policy or unless you have additional information relative to this issue not submitted in previous correspondence or discussions.

If you intend to protest, it should be filed within 15 days from the date of this letter and should include a suggested date for the district or National Office conference, if one is desired. If you do not respond within 15 days, notice of revocation of the exemption ruling will be issued.

If you have any questions, please call our Exempt Organizations Group Supervisors, Mr. Earl J. Fillbach or Mr. H. W. Gustin, at 404-526-4516. Correspondence should be addressed to the address given above at Atlanta.

(Signature omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

State of South Carolina
County of Greenville

Personally appeared before me O. Jack Taylor, Jr., who first being duly sworn states and deposes:

I am one of the attorneys for Bob Jones University, Plaintiff in the above captioned matter. In the latter part of April 1971, University officials contacted me and requested that I write to Mr. C. B. Rogers, Staff Assistant, Office of Treasurer, Nationwide Foundation, concerning the tax exempt status of Bob Jones University. Pursuant to that request, I wrote to Mr. Rogers on April 23, 1971, a copy of my letter is attached hereto. In response to my letter of April 23, 1971, I received a letter dated April 26, 1971, from Mr. George W. Schmidt, attorney for Nationwide Foundation, a copy of which is attached. Mr. Schmidt advised that he would require written assurance from the Internal Revenue Service that any action the Internal Revenue Service might take concerning Bob Jones University's tax exempt status would be prospective only in operation before he could advise his client, Nationwide Foundation, to make matching gifts to the University. In response to Mr. Schmidt's letter of April 26, 1971, I wrote to Mr. Schmidt on April 29, 1971, forwarding to him Internal Revenue Service News Release Number 1052 and a copy of Testimony by Randolph W. Thrower then Commissioner of Internal Revenue before the Senate Select Committee on Equal Educational Opportunity, a copy of my letter and enclosures is attached hereto. In response to my letter of April 29, 1971, I received from Attorney Schmidt his letter dated May 3, 1971, a copy of which is attached with enclosure in which he states he cannot advise his client that it may make

a gift to Bob Jones University without possibly jeopardizing its own tax exempt status.

I am informed and believe that Nationwide Foundation has not made matching gifts to the University because of the threatened action of the Defendants. I am further informed and believe that because of said threatened action, Bob Jones University has been irreparably harmed and damaged because Nationwide Foundation has failed and refused to make gifts to the University which it would have otherwise made had not the Defendants threatened to revoke the tax exempt status of Bob Jones University. I am further informed and believe that the loss of such gifts and other gifts the University would expect to receive in the future can never be recovered by Bob Jones University.

(Signature and Jurat omitted)

Letterhead of Leatherwood, Walker, Todd, and Mann

April 23, 1971

Mr. C. B. Rogers
Staff Assistant
Office of Treasurer
Nationwide Foundation
246 North High Street
Columbus, Ohio 43216

Re: Bob Jones University
Greenville, South Carolina

Dear Mr. Rogers:

Please be advised that this firm is counsel for Bob Jones University, Greenville, South Carolina. The University has asked that we write to you confirming that the University presently enjoys tax exempt status under the Internal Revenue Code of 1954. Although as you are aware the Internal Revenue Service has questioned the tax exempt status of schools such as Bob Jones University. As of this date they have taken no action concerning the University's status. We have been assured by the Internal Revenue Service that any action taken

would be prospective in operation and not retroactive. Moreover, should the Internal Revenue Service take action adverse to the University it is contemplated that such action would be resisted vigorously.

I assume that with this information at hand you will be able to continue to make matching gifts. However, should you desire further information or clarification of the University's position, please advise. Thanking you for your attention and cooperation in this matter, I am

(Signature omitted)

LETTERHEAD OF HOWELL, WAGNER & SCHMIDT
COLUMBUS, OHIO

April 26, 1971

O. Jack Taylor, Jr., Esq.
Leatherwood, Walker, Todd & Mann
217 E. Coffee Street
Greenville, South Carolina 29602

Re: Bob Jones University
Greenville, South Carolina

Gentlemen:

We are counsel for Nationwide Foundation of Columbus, Ohio. Mr. C. B. Rogers of Nationwide Foundation has referred to us your letter of April 23, 1971, and prior correspondence regarding matching gifts by the Foundation to Bob Jones University.

Our concern is to preserve the tax-exempt status of Nationwide Foundation. As you know, ordinarily there is no problem if grants are made to an organization listed in the IRS Cumulative List of Organizations Described in Sec. 170 (c) of the Internal Revenue Code, and Bob Jones University is on that list. However, it was reported when the IRS announced its policy regarding segregated private schools that their exemptions might be revoked retroactively. See New York Times, July 11, 1970 edition, page 1. See also Treasury Info. Release No. 1041, dated August 19, 1970, indicating

problems for contributors who know of activities that result in disqualification.

Accordingly, if you have written assurance from the IRS that any action they may take will be prospective only in operation and not retroactive, please send me a copy. If it is satisfactory assurance, and barring any new developments by the IRS, I believe we can advise the Foundation it can make the matching gifts. In the absence of such written assurance, however, my opinion to Nationwide Foundation would have to be that the making of the matching gift might jeopardize its tax-exempt status.

(Signature omitted)

Letterhead of Leatherwood, Walker, Todd and Mann

April 29, 1971

George W. Schmidt, Esquire
Howell, Wagner & Schmidt
246 North High Street
Columbus, Ohio 43216

Re: Bob Jones University
Greenville, South Carolina

Dear Mr. Schmidt:

I have your letter of April 26, 1971, requesting written assurance from the Internal Revenue Service that any action they take against our client will be prospective only in operation and not retroactive. I am enclosing herewith Internal Revenue Service News Release No. 1052 which you will note in the next to the last paragraph states that the Service will allow deductions for contributions made prior to the date of the public announcement by the Internal Revenue Service of any revocation. I am also enclosing herewith a copy of Testimony before the Senate Select Committee on Equal Educational Opportunity by Randolph W. Thrower, Commissioner of Internal Revenue and call your attention to his statements on page 18 wherein he states that the position of the Internal Revenue Service will be applied prospectively rather than retroactively.

As of this date, the Internal Revenue Service has taken no action with regard to the University's tax exempt status and based upon the enclosed statements, we naturally assume that if any action is taken or attempted, that its effect will be prospective only.

Should you have any further questions concerning this matter, please advise. I am sure that with the information contained herein you will be able to advise your client that it could continue making matching gifts.

(Signature omitted)

The news release of the Internal Revenue Service dated July 19, 1970, attached to the Affidavit of O. Jack Taylor, Jr., has been reproduced previously in this Appendix at Page A-39.

Testimony
Before
The Senate Select Committee
On Equal Educational Opportunity
by
Randolph W. Thrower
Commissioner of Internal Revenue

I am pleased to accept your invitation to discuss before this Committee the recently announced position of the Internal Revenue Service, indeed of the present Administration, respecting the status for Federal tax purposes of private schools having racially discriminatory admissions policies. I will also direct myself to specific questions raised in your letters to me of July 21, July 31 and August 10, 1970.

At the outset of this discussion, it is essential that I outline the limited nature of the authority and responsibilities of the Internal Revenue Service insofar as private schools are concerned. Our responsibilities and our determinations begin and end within the confines of the Internal Revenue laws as interpreted by the rulings and regulations of the Treasury Department and the Internal Revenue Service and decisions

of the Federal courts construing the statutes or establishing constitutional limitations or directives. In short, the responsibility of the Internal Revenue Service is not to create new laws but simply as an administrative agency to implement and enforce the applicable laws.

The Internal Revenue Service neither grants nor denies exemptions. In the application of the statutory provisions for exemption and deduction of contributions with which we are here concerned, its function is to determine factually and legally whether a particular organization or a particular contribution comes within one of the prescribed classes of organizations or one of the prescribed classes of contributions described in such statutory provisions. This determination of the IRS is, of course, subject to review by the courts if an adversely affected organization or contributor wishes to contest it.

Under procedures followed by the Service for many years an organization claiming exemption under any of the exemption provisions of the Internal Revenue Code has been able to submit an application for a ruling from the Service that the organization qualifies for exemption. This is consistent with the ruling procedures and practices made available to individuals, business corporations and other entities under many other provisions of the Internal Revenue Code. See: Sec. 601.201 of the Statement of Procedural Rules, encompassing Rev. Proc. 69-1 through 69-6, C.B. 1969-1, pages 381 through 401. This practice, for example, gives taxpayers undertaking to carry on business operations or engage in financial transactions some degree of certainty as to the effect of specified Federal tax provisions upon those activities.

The Service currently is issuing rulings at the level of around 25,000 each year from the National Office and many more from the field. Some of these are favorable to the position sought by the applicants and some unfavorable. The greater part of these are "advance rulings" in the sense that they are prospective in scope, ruling upon transactions or operations expected to be carried out in conformity with the

assertions made in the request for the ruling. Copies of these rulings are sent to the District Director having territorial jurisdiction of the case and the facts on the basis of which rulings are issued are subject to vertification in field examinations. Rulings on exempt organizations provide only a part of the total rulings process administered by the Service.

The procedures applicable to other taxpayers are generally followed with respect to requests by organizations for advance rulings on their exempt status. Rev. Proc. 69-3, C. B. 1969-1, 389. The applicants are expected to submit information as specified by the Service describing the nature of the objectives and operations of the organization claiming exemption, together with a certification by its responsible officers of its correctness. Where the Service, relying upon the information submitted, issues a favorable ruling to an organization of the sort to which contributions are deductible, the fact of the issuance of the ruling is published by the Service in its Publication 78 entitled "Cumulative List of Organizations Described in Section 170 (c) of the Internal Revenue Code of 1954." Until notice in the Internal Revenue Bulletin of the termination or revocation of the ruling, contributors may generally rely upon the ruling of exemption in deducting their contributions for Federal income tax purposes. In the absence of a favorable ruling, or despite an adverse ruling, the contributor may nevertheless insist upon the deductibility of the contribution and contest it in court if the Service does not agree. Likewise, an organization claiming exemption may contest an assertion of tax against it.

Educational institutions, as well as churches and other charitable organizations, have enjoyed a long history of privileged treatment under the common law as established in England and adopted in the colonies and the United States. Similarly privileged treatment of such institutions is found in earlier civilizations such as those of Rome and Greece, and in early Judaism, as well as in many other early cultures and religions.

This privileged status is reflected in the preferential tax treatment which has been accorded charities throughout much of the history of income, estate, inheritance, and property taxation in both England and this country, as well as many other countries. Typifying such preferential tax treatment in this country are the provisions of Sections 501(a) and 501(c)(3) of the Internal Revenue Code which extend exemption from income taxation to:

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

This provision, with its principal focus on religious, educational and other charitable institutions, came into modern federal income tax law with the very first general corporation income tax at the turn of the century. Section 38 of the Act of August 5, 1909, 36 stat. 112. There are a number of other classes of organizations which are accorded varying degrees of exemption from Federal income taxation. They range from civic leagues to labor organizations, and include such nonprofit entities as trade associations, fraternal beneficiary associations, social clubs, and cemeteries, covering in all some eighteen categories.

A very important difference between the benefits under the Federal tax laws accorded religious, educational and other charitable institutions as contrasted with the other exempt organizations is in the deductibility of contributions to the former but generally not to the others. Under Section 170

and other provisions of the Internal Revenue Code, gifts and bequests to charities are deductible within certain limitations for Federal income, estate and gift tax purposes.

Under common law, the term "charity" encompassed all three of the major categories now identified separately under Section 501(c)(3) of the Internal Revenue Code as religious, educational and charitable. That Congress intended to adopt the broad common law concept of charities is shown in the Section 170(c) which expressly defines the term "charitable contribution" as including a gift to a corporation, trust, fund or foundation which is organized and operated exclusively for educational purposes. This understanding as to the adoption by Congress of the common law concept of charity is reflected in income tax regulations, published rulings of the Service and decisional law. See Section 1.501(c)(3)-1(d)(2) and (3) of the Income Tax Regulations; Rev. Rul. 67-325, C. B. 1967-2, 113, 116. See: *Henry C. Dubois*, 31 B.T.A. 239 (1934); *Horace Heidt Foundation v. U.S.*, 170 F. Supp. 634 (Ct. Cl. 1959); *The Founding Church of Scientology v. U.S.*, 412 F. 2d 1197 (Ct. Cl. 1969)

The incorporation of the common law concept of charity within these provisions of the Internal Revenue Code is highly relevant to our statement of position. An organization seeking exemption as being organized and operated exclusively for educational purposes, within the meaning of Section 501(c)(3) and Section 170, must meet the tests of being "charitable" in the common law sense.

The decision announced on July 10, 1970, rests upon the conclusion that under the basic principles of the common law of charities, applied in the light of today's knowledge and understanding, the Federal government can no longer legally justify the allowance of the financial benefits of tax exemption and, more importantly, the deductibility of contributions, to private schools which exclude qualified students solely on the basis of race. In this way, private education having these Federal tax benefits will be equally available to all without regard to race, whether white, black, Mexican American, American Indian, Oriental, Eskimo, Aleut or others.

During the past 15 months or so, and especially since the first filing of the complaint in *Green v. Kennedy and Thrower,* before a three-judge federal district court in the District of Columbia on May 21, 1969, the legal aspects of this issue have been studied in great depth within both the Treasury Department and the Department of Justice, and both departments are in accord with the statement of position and believe that it will be upheld in the courts.

We fully appreciate that opinions may differ as to the ultimate outcome of judicial review of the tax status of schools having racially discriminatory admissions policies. The position being taken by the Internal Revenue Service will permit a testing of this issue by the courts in cases where the adversely affected school or one of its contributors is involved as a party at interest.

Your letter of July 21 asks in particular "the ways in which it (the new position) will be implemented and the extent to which monitoring or investigation will be utilized." Our plans for implementation are generally described in the press releases of the Internal Revenue Service dated July 10, 1970, and July 19, 1970, which we have submitted to the Committee.

My response to your question will refer generally to three principal categories of schools, as follows:

1. Schools currently applying for rulings (excepting those in Mississippi).

2. Schools which have secured favorable rulings in the past (excepting those in Mississippi).

3. Schools in Mississippi currently applying for rulings (numbering 13) or which have received rulings in recent years (numbering 41), both of which are now covered by orders of the court in *Green v. Kennedy.*

As stated in our press release of July 10, 1970, we are proceeding without delay to issue favorable rulings where we are assured that a private school (not in Mississippi) has adopted and is announcing to the public a racially nondiscriminatory admissions policy. This is based on representa-

tions of fact made to us in writing by responsible officers of the school setting forth its admissions policy and the publication of this to the public. We are currently following the practice of advising the news media of the issuance of the favorable ruling with the expectation that this will provide additional publicity, at least within the locality, of the IRS action and the existence of the racially nondiscriminatory admissions policy. As previously explained, it is in accordance with our usual procedures in issuing advance rulings to accept the taxpayer's factual representations upon which the ruling is based, subject to subsequent examination in the field.

Favorable rulings given to private schools in the past will remain outstanding where the school is able to show that it has racially nondiscriminatory admissions policies. As was also stated in that press release, and I quote:

> All private schools with favorable rulings outstanding will receive a written inquiry from the District Director of Internal Revenue and it is anticipated that in most instances evidence of a nondiscriminatory policy can be supplied by reference to published statements of policy or to the racial constituency of the student body.
>
> Where a school fails to establish that it has a racially nondiscriminatory admissions policy, an outstanding ruling of exemption will be withdrawn. However, a school seeking to clarify or change its policies and practices will be given a reasonable opportunity to do so in order to retain its ruling of federal tax exemption. In any event, full opportunity to present evidence and be heard will be provided in accordance with usual revenue procedures and the right to appeal to the courts will be available. Similar principles will be followed in acting upon requests made by new schools for rulings.

We are undertaking to apply these policies in an even-handed manner throughout the United States to both estab-

lished institutions and new schools currently making applications. We now estimate very conservatively that there are not less than 17 or 18 thousand private schools within the United States presently enjoying a tax exempt status recognized in favorable rulings previously issued by the Internal Revenue Service. Of these 17,000 or more schools, 5,000 or more have favorable rulings of exemption directed to that school alone and the remainder are covered by group rulings issued to a sponsoring organization such as to the Catholic Church.

Our files do not now contain information sufficient to permit a determination as to the admissions policies of these schools and thus an inquiry will be directed to each of them or its sponsoring organization. Moreover, since this is a newly developed position which was not suggested as a condition at the time of the earlier rulings on the exempt status, we have concluded, in accordance with our usual policies, that the new position should be applied only prospectively. It would also follow from this that, where necessary, a school should be given a reasonable opportunity to clarify or modify its policies and practices so as to come into compliance for the future.

In implementing this statement of policy with respect to pending applications, we have moved as expeditiously as possible because action on many of these applications was delayed while our former position was under review. Until the new position was developed, we were not certain as to what information would be required to process these applications and thus were not able to have all of this information on hand for action on July 10. Consequently, we promptly advised these applicants of the new requirements and have invited telephone inquiries from the schools where they were in doubt as to what they must submit to show that they were in conformity with the new position. On July 10,

1970, we had pending in the National Office 136 applications which possibly involved this issue and which had been forwarded to the National Office by the Districts. Since July 10 we have acted favorably on 7 of these applications.

Your letter of July 31 states that you are "particularly interested in the tax exemptions granted to six private schools on July 19" and you specifically state: "In order that we might gain some understanding of your new policy and procedures, please inform the Committee, at least one week in advance of your testimony: (1) whether these schools operated with racially discriminatory admissions policies during the last school year; (2) whether these schools were 'segregation academies' established to circumvent public school desegregation, and (3) what steps each school was required to take in order to obtain an exemption." Your letter continues: "In addition, I would appreciate your supplying the Committee, at the same time, with the correspondence between the IRS and these schools relating to the recent ruling." Your more recent letter of August 10 extends this to the seventh school on which we acted favorably, and asks for additional information applicable to all schools.

In view of the limited time which has been available and the demands on our personnel working in this area in implementing the policy as outlined above, and in responding to inquiries from Members of Congress and other sources, it was not possible for us to supply the information as early as you requested. However, this material was submitted along with advance drafts of this testimony.

The seven schools to which we issued favorable rulings were:

DeSoto School, Inc.
Helena, Arkansas

The Heritage School, Inc.
Newnan, Georgia

Southeast Education, Inc.
Dothan, Alabama

Holly Hill Academy, Inc.
Holly Hill, South Carolina

Nathanael Greene Academy
Siloam, Georgia

Pamlico Community School
Washington, North Carolina

The Gaffney Day School
Gaffney, South Carolina

The DeSoto School intends to begin operations in September 1970. Its bylaws state that "Applications shall be received and considered without regard to religious affiliation, race or nationality." This fact has been publicized within the community. As in all of the other cases, and as will now be our usual policy, the favorable ruling and the basis upon which it was issued will be released by the IRS to the news media of the immediate area.

The Heritage School, Inc., also expects to begin operations in September 1970 and has otherwise met our requirements. We were advised that the school intends to accept students of all races and the Newnan Times Herald of March 5, 1970, publicized an article, obviously released by the school, which included the statement: "Student enrollment, without regard to race, creed, color, or national origin, will begin when the headmaster takes office." We were assured by Dr. William L. Pressley, an eminent school administrator, who has recently appeared before this Committee and who has advised with the organizers of this school, that the school does intend to administer an open-door admissions policy in good faith and hopes to have applications from qualified Negroes as well as whites.

Our basis for a favorable ruling on the application of Southeast Education, Inc., is similar to that for the DeSoto School and the Heritage School. The operation of Houston Academy by Southeast Education, Inc., is to begin in September 1970. We had been advised in December 1969 that the school had a racially nondiscriminatory admissions policy and that this had been made known to the citizens of the community. Before the issuance of the ruling we were assured that this would be further publicized within the community in the specific language of the IRS statement of position.

Nathanael Greene Academy, Inc., began operations during the past school year with only white students in attendance. No Negro students applied. We were advised that the Academy in its first year of operation had adopted no rules or policies designed to prevent enrollment of any member of a minority group. On the other hand, it had not then affirmatively adopted an open-door admission policy. We are now advised in writing by the chairman of the board of trustees of that school that the board has now adopted a racially nondiscriminatory admissions policy which is being published in the town's weekly newspaper.

The basis for our action regarding The Gaffney Day School is similar to that for the Nathanael Greene Academy. The Gaffney Day School operated during 1969 with only white students. Its opening was known in the community and it received no applications from Negro children. We were assured that the board of trustees of the school had "instructed the headmistress from the very beginning to process all applications in the same manner without regard to race." It has asserted that it does not have a racially discriminatory admissions policy and, in fact, that it has already ordered the printing of brochures specifically stating that students will be accepted without regard to race. We are also assured that the brochures will be distributed "as widely as possible" and that advertisements to this same effect will be made in the local paper.

The Pamlico Community School of Washington, North Carolina, has similarly assured us that, although it has operated for a year with only white students, it does not have a discriminatory admissions policy and has widely publicized its existence and availability within the community. It has had no applications from Negroes. We are assured that the school does not have a discriminatory admissions policy, that it will accept enrollment of qualified Negro applicants and that its racially nondiscriminatory admissions policy will be published in the local newspaper.

Holly Hill Academy of Holly Hill, South Carolina, ran

legal notices in its local papers on February 19 and February 21, 1970, of a legal meeting to be held for the purpose of organizing the Holly Hill Academy, Inc. "to operate a system of elementary and secondary schools for the education of children of all races and creeds." It incorporated on March 4, 1970 "to promote, own and operate a system of elementary and secondary schools for children of all races and creeds." The 1970-71 school term will be its first year in operation. By letter of July 20, 1970, the school again advised us that the school "is open to qualified students of all races and creeds." It stated that the number of students seeking enrollment to date is 211, and added: "To reach capacity the Academy will advertise in the local papers, notifying the public of openings, and advising the nondiscriminatory admissions policy."

Your letter of July 31 asked also that I advise the Committee as to whether these schools were "segregation academies" established to circumvent public school desegregation. The implementation of the program which we have outlined for schools organized prior to the date of our statement of the new position does not make our ultimate determinations dependent upon the earlier motivation for the formation of the school. This applies equally to those seeking rulings and to the 17,000 schools which already had favorable rulings. In accordance with our usual policy at the administrative level, we are applying our new position prospectively rather than retroactively, whether the schools were opened a year ago or 200 years ago. The policy of nonretroactivity in the application of our tax laws has repeatedly been recognized in legislation by the Congress and, of course, reflects elementary concepts of fair play. Thus, any school, regardless of what its policies and practices may have been, will be given a reasonable opportunity to make such changes in its policies and practices as will permit it to conform to the new position. Consequently, we have not at this time made an effort to determine the motivation for the formation for the seven schools about which you specifically inquired.

I do not mean to suggest by the foregoing that the prior history of a school would under no circumstances be relevant to a determination on our part of its tax exempt status. We certainly hope that any school, which gives the IRS formal assurance in writing over the signature of its responsible officials that it has adopted and will in good faith administer a racially nondiscriminatory admissions policy, is not acting with undisclosed reservations, and will not depart from this commitment in the future. Where we receive complaints raising serious questions as to whether the commitment is being followed in good faith, in appraising the entitlement of the school to continued exemption, it may become relevant to take into consideration the entire history of the institution in order to gain the best possible understanding of the character of its operation at a particular time.

It is not possible to be much more specific about our plans until we get a better grasp of the dimensions of the problem. At the present time we do not know to what extent schools may now have racially discriminatory admissions policies nor to what extent those having such policies will change them in order to conform with the new position. We believe that the most constructive reaction to our new position will be for such schools to conform.

Before closing my prepared statement, and in order to provide for the Committee a full understanding of the present status of private schools under the tax laws, special comment must be made about Mississippi schools which have been made the subject of court orders entered by the court in *Green v. Kennedy and Thrower*.

By orders of the court issued on January 12, 1970, and June 26, 1970, the Service was required to secure court approval for any favorable actions proposed to be taken on pending Mississippi applications and to withdraw assurance of deductibility of contributions to 41 private schools which had received such rulings in Mississippi from 1963 through June 30, 1969. More specifically, the order of January 12, 1970, enjoined the defendants from approving any further

application for exemption by any private school located in the state of Mississippi enrolling students in any of the grades one through twelve, or determining that contributions to such schools were deductible, unless the defendants "first affirmatively determine pursuant to appropriate directives and procedures satisfactory to this Court" that the applicant school "is not a part of a system of private schools operated on a racially segregated basis as an alternative to white students seeking to avoid desegregated public schools." By further order of June 26, 1970, the defendants were ordered that they should "forthwith order, pursuant to the procedures of Rev. Proc. 68-17, 1968-1 C. B. 806 or similar proceedings providing for notice to the public and to all affected schools, the suspension of the advance assurance of deductibility of contributions" for 41 private schools in Mississippi which had received favorable ruling letters since 1963. The defendants were further ordered to "continue such suspension of advance assurance of deductibility of contributions for such schools" unless they "first affirmatively determine pursuant to appropriate directives and procedures satisfactory to this Court that the school whose advance assurance of deductibility is suspended is not part of a system of private schools operated on a racially segregated basis as an alternative to white students seeking to avoid desegregated public schools."

We have before us at the National Office applications for tax exemption from 13 private schools in Mississippi covered by the Court's order of January 12, 1970. We are inquiring from those schools whether they intend to conform to the new statement of position. In addition, we have notified the 41 Mississippi schools of the nature of the court's order of June 26, 1970. We described the requirements of the court's order and of our new statement of position and gave each of the 41 schools an opportunity for a conference with district and National Office representatives in Jackson, Mississippi. Through August 10, 1970, conferences had been held with 26 of these schools.

One of these 41 schools has stated that it is already in

conformity with our position and four have stated that they have adopted and will publicize a racially nondiscriminatory admissions policy and will within a week or two furnish us with a copy of the publication.

We found that two of the schools were no longer in existence.

Eight of the 41 schools asserted that they would not conform with the statement of position and, pursuant to the orders of the court, letters suspending advance assurance of deductibility are being issued to these schools. A typical letter of suspension following our usual form has been supplied to the Committee.

Sixteen of the schools indicated that they were not prepared to give a definite answer and would have to consult their boards of directors. They were advised to notify the IRS within 30 days of their decision and to submit evidence of publication of a new policy if one were adopted.

When these determinations are concluded as to each of the 41 schools, they will be reported to the district court.

We were asked by some Members of Congress and others to give expeditious attention to the request of the Piney Woods School of Piney Woods, Mississippi, that it be formally advised that its tax exempt status, approved in 1941, would not be adversely affected by the new statement of position. After the receipt of information from the school on its admission policies we were able, on July 24, 1970, to advise the school in writing that it met the standard set forth in our statement and that its favorable ruling would be left undisturbed. It was indicated that the school has a student body of about 350, with 25 Mexican-American, two white and the remainder Negro. The faculty consists of both white and Negro teachers. The school charges no tuition and was concerned about getting immediate approval because of its dependency upon contributions from throughout the nation.

This completes my prepared statement and I trust that it answers all of the questions indicated in your letters and gives you an over-view of our plans for implementing the

statement of July 10. I will be happy to answer any questions which members of the Committee may have.

LETTERHEAD OF HOWELL, WAGNER & SCHMIDT
COLUMBUS, OHIO

May 3, 1971

O. Jack Taylor, Esq.
Leatherwood, Walker, Todd & Mann
217 E. Coffee Street
Greenville, South Carolina 29602

Re: Bob Jones University
Greenville, South Carolina

Gentlemen:

Thank you for your letter of April 29 and copies of IRS News Release No. 1052, July 19, 1970, and copy of Testimony by Commissioner Thrower before the Senate Committee.

I certainly wish that this information would settle the matter so that Nationwide Foundation could make a contribution without possibly jeopardizing its own tax-exempt status. However, I do not feel that this is the case.

In my opinion IRS Announcement 71-31, published in Internal Revenue Bulletin No. 1971-15 (April 12, 1971) copy enclosed is more to the point. The problem is that the IRS has stated in this Announcement and in TIR 1041 which I referred to in my letter that assurance of deductibility of contributions to an organization named in the IRS Cumulative List does not extend to persons who know of activities that result in disqualification of the organization. It seems clear to me that the admission policy of Bob Jones University which has been made known to us, is in conflict with the IRS position in this matter. Therefore, in my opinion, Nationwide Foundation's tax-exempt status might be jeopardized by making a contribution to the University. I am sure that you will agree with me that maintaining the tax-exempt status of our organization is of even greater importance and consequence than the deductibility of a contribution by an individual or corporation.

We probably both know of a number of cases where the IRS has attempted to revoke tax-exempt status retroactively. At least I have had that experience. I do not interpret Commissioner Thrower's statement to mean that the IRS position will not be applied retroactively in any manner. Rather, I think that all he was saying was that a school which had in the past a restricted admissions policy but changed it to an open admissions policy, would not have its exemption revoked. However, this is not your case.

In view of the above, I regret that I cannot advise Nationwide Foundation that it may make a gift to Bob Jones University without possibly jeopardizing its own tax-exempt status.

(Signature omitted)

Suspension of Advance Assurance of Deductibility of Contributions Announcement 71-31

The Internal Revenue Service can no longer give advance assurance of deductibility of contributions to Fayette Academy, Somerville, Tennessee. The withdrawal is effective for gifts made after April 12, 1971.

This suspense action is taken under the standards announced by the Service on July 10, 1970, which called for the adoption of racially nondiscriminatory admissions policies that are made known to the community served by the school. The Academy was found not to be in conformity with these standards and not willing to conform and consequently has been notified of the Service action.

Prior to the suspension action, the Service gave the Academy an opportunity for administrative conferences in accordance with its rules and procedures for tax exempt organizations.

Ordinarily, a person is assured of deductibility of contributions to a tax exempt organization named in the published list of organizations described in section 170(c) of the Internal Revenue Code of 1954. However, this assurance does not

extend to persons who know of or are responsible for activities that result in disqualification of the organization. The object of the action described herein is to withdraw the assurance of deductibility of contributions made to the Academy pending a final determination of its status under section 501(c)(3) of the Code.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
Greenville Division

Civil Action No. 71-891

Washington, D.C.
Thursday, September 30th, 1971

Deposition of WILLIAM H. CONNETT, Assistant to the Commissioner of Internal Revenue, a witness of lawful age, taken on behalf of the plaintiff in the above-entitled action, pending in the District Court of the United States for the District of South Carolina, Greenville Division, pursuant to Order, before Caroline H. Connelly, a notary public in and for the District of Columbia, in the offices of the Internal Revenue Service, Room 3302, Internal Revenue Service Building, 1111 Constitution Avenue, Northwest, Washington, D.C., at 1:35 p.m., Thursday, September 30th, 1971.

APPEARANCES:

On behalf of the Plaintiff:

LEATHERWOOD, WALKER, TODD & MANN
By: Fletcher C. Mann, Esquire
217 East Coffee Street
Greenville, South Carolina 29602

On behalf of the Defendants:

STANLEY F. KRYSA, Esquire
and
JOHN J. McCARTHY, Esquire
Tax Division
Department of Justice
Washington, D.C.

Mr. Krysa: May we have a stipulation that all objections except as to the form of the question can be reserved until the time –

Mr. Mann: That's what the rules say. This deposition may be tendered or offered for any purpose.

How about signature, reading and so forth?

Mr. Krysa: Do you want to read it?

We won't waive signature.

Thereupon,

WILLIAM H. CONNETT, a witness of lawful age, was duly sworn by the notary public, and being examined by counsel, testified as follows:

Direct Examination

By Mr. Mann: Mr. Connett, you occupy the position of Assistant to the Commissioner of Internal Revenue of the United States?

A. That's correct.

Q. In that capacity I believe that you are the principal spokesman for the Commissioner on matters relating to the

administration of the Exempt Organizations Provisions of the Internal Revenue Code?

A. Yes, I am.

Q. How long have you served as Assistant to the Commissioner of Internal Revenue?

A. Since December of 1970.

Q. December of 1970?

A. Yes, sir.

Q. All right, sir. Now then are you aware and were you made aware that upon assuming that position that during July of 1970, the Internal Revenue Service had formulated a position with respect to the continuance of tax exempt status of private schools which maintain a racially discriminatory policy?

A. I was made aware of that position.

Q. I believe that in the action which is here pending that you have heretofore prepared and submitted an affidavit, have you not, sir?

A. Yes, I have.

Q. Attached to that affidavit is a copy of a news release issued by the Service, by Internal Revenue, on or about July the 10th, 1960, or 1970, I am sorry.

Mr. Krysa: It's Exhibit A attached to the affidavit, I believe.

The Witness: Yes, that's correct.

By Mr. Mann: And does that Exhibit A attached to your affidavit correctly set forth and state the position of the Internal Revenue Service with respect to the tax exempt status of private schools?

A. It does in a fairly simplistic fashion. The news release was modified on July 19th by way of clarification.

Q. Thereafter on or about November the 30th of 1970, as shown by Exhibit B attached to your affidavit, a letter was sent by Internal Revenue Service to Bob Jones University, the plaintiff in this action?

A. That's correct.

Q. Now according to the news release and the letter sent to Bob Jones University, it was stated that the Internal Revenue Service had concluded that private schools with racially discriminatory admissions policies are not legally entitled to Federal Tax exemptions, is that correct?

A. Yes, sir.

Q. Is that the policy as established by the Internal Revenue Service?

A. Yes, sir.

Q. In addition to this, not being entitled to the tax exemption, it is also the policy of Internal Revenue that contributions made to such schools are not deductible by the contributor for tax purposes?

A. That's correct.

Q. And that is the present and existing policy of the Internal Revenue Service?

A. Yes. it is.

Q. Now, Mr. Connett, you have had occasion to be present, I believe, during conferences concerning the admission policies of Bob Jones University, have you not?

A. Yes, sir.

Q. In addition, there have been supplied to you copies of their admissions policies and statements relative to those policies, have there not?

A. Yes, there have been.

Q. And based upon those conferences and the information supplied to you, you are aware, are you not, sir, that Bob Jones University does not admit black students to its student body?

A. I have just recently been shown an excerpt from a newspaper article from Greenville indicating that Bob Jones University has admitted a black student.

Q. Sir, prior to that time, you were aware that they did not admit black students?

A. Yes, sir.

Q. And this matter was made known to you and to the Commissioner of Internal Revenue?

A. Yes, we were told that in discussions.

Q. Both the present Commissioner, Mr. Walters, and his predecessor, Mr. Thrower, were advised in that respect, were they not?

A. Mr. Walters was advised by myself and other members of the Service. I wasn't present in conversations between him and representatives of the University.

Q. All right, sir. Now, Mr. Connett, have you discussed the Bob Jones University exempt status and admissions policies with other officials in the Internal Revenue Service?

A. Yes, I have.

Q. And with whom have you discussed that admissions policy and the tax exempt status?

A. I have discussed the question with former Commissioner Thrower, present Commissioner Walters, Chief Counsel Worthy, representatives of the District Directors' Office in Atlanta, Georgia, the Chief of the Exempt Organization Branch of the Audit Division in the National Office of Internal Revenue Service.

Q. Have you received any memorandum or orders or documents from the Commissioner or from any of the individuals that you have named concerning either the admissions policy or the tax exempt status of Bob Jones University?

A. Did your question refer to only written material or also oral material?

Q. Oral or written.

Mr. McCarthy: Let's break that question down into two parts.

By Mr. Mann: All right, first with respect to written material?

A. No, no written material.

Q. All right, sir, have you yourself prepared any memorandum or directive or document or instructions in writing with respect to either the admissions policy or the tax exempt status of Bob Jones University?

A. Sometime in the last three weeks or thereabouts, I

prepared a memorandum to Honorable Chief of the Exempt Organization Examinations Branch, or the Assistant Commissioner of Compliances advising that because of the pending litigation of the Bob Jones University suit, no action should be taken to process the University's reply to the November 30th letter and questionnaire.

Q. Were there any prepared by you prior to that time?

A. No.

Q. All right, sir. Now have you received any oral communications from any of the individuals in the form of directives or memorandums or otherwise, instructions regarding the tax exempt status of the Bob Jones University?

A. Sometime, in approximately February roughly, and I'm not sure if it was February or March, Mr. Thrower, then Commissioner Thrower, advised me that Bob Jones was considering the possibility of complying with the Service position and asked me to insure that the District Director did not proceed with processing of the questionnaire response until we had had a chance to explore the matter more fully.

Then following the meeting with representatives of Bob Jones University in May 1969, I believe it was, Mr. Thrower again advised me that I should ask the District Director to hold processing of the questionnaire in abeyance. He also told me that I would be called by Wesley Walker who would advise me of the decision of the University regarding the admissions policy.

Q. All right, sir. Now have you —

A. No, I'm not finished.

Q. I'm sorry, pardon me. I didn't mean to cut you off.

A. When Wesley Walker called and informed me that the University was not inclined to change its admission policy, I advised Commissioner Walters and the agreement in our discussion was that I would advise the District Director to proceed to process the questionnaire response.

Subsequently, Mr. Commissioner Walters advised me he had been contacted by you, Mr. Mann, and asked me to advise

the District Director to again withhold any action pending further advice.

Q. Had you in the interim advised the District Director in Atlanta or elsewhere to proceed with the processing of this matter that you referred to?

A. As it happens, when I spoke to Wesley Walker on the phone, I was in Atlanta and following the telephone conversation with him, when I told him that the District Director would proceed to process the questionnaire response, I then, following the conversation, notified the District Director's representative of the conversation.

Q. And to proceed with the processing of that response?

A. Yes, sir.

Q. And that would take what form, sir?

A. The present procedure is that the District Director's representative would contact the school or its representatives and offer the school or its representatives the opportunity of a conference.

His purpose at the conference would be to make sure that the school fully understood the Service's position and the steps that would be necessary for the University to comply with that position.

If the conference concluded with the University indicating that it would not comply with the requirements of a racially non-discriminatory admissions policy, the District Director would issue a letter to the University stating, (1), that he was proposing to recommend that the ruling recognizing an exemption be revoked and, (2), that the ruling ensuring deductibility of contributions be suspended insofar as advance assurance of deductibility of contributions is provided.

Q. All right, sir. Now Mr. Connett this form that you have referred to was in the process of preparation to be sent to Bob Jones University?

A. No sir. First, the representatives in the normal course of handling of the case, and I don't know how long that would

have taken, but they would have contacted the school presumably by telephone and tried to arrange a conference to discuss the matter before a notice was provided.

Q. All right, sir. Now is it not true that under the position that has been adopted by the Internal Revenue Service the admission policy of Bob Jones University, which would not admit a black student, without regard to any other factors involved, would that, or would it not result in a revocation by the Internal Revenue Service of its tax exempt status?

A. It would result in the District Directors' proposing revocation. If when the final action were reached following protest and conference, the University had a racially discriminatory policy and the Service's position were the same as it is today, the Service position would be to revoke the recognition of exemption.

Q. Then unless, as I understand your statement, unless Bob Jones University chose the admissions' policy as you understood it at the time when under the position of Internal Revenue, its status, its tax exempt status would be revoked?

Mr. Krysa: I object to the form of the question. I don't believe that is his position. There is another element in there that you have left out – if the law doesn't change.

By Mr. Mann: All right, under the existing law, as you interpret it –

A. If under the existing law – let me start over.

Under the existing position of the Service, if a decision is made today on a case and the school in that case has a racially discriminatory admissions policy, the Service's position is that the school does not qualify for recognition of exemption or the right to receive deductible contributions;

Q. So that it would lose not only the tax exempt status but the contributors would lose their tax deductibility of any contributions made to that institution?

Mr. Krysa: Object to the form of the question.

By Mr. Mann: All right, sir. Mr. Connett, under the position which is presently adopted by the Internal Revenue Serv-

ice, any school, private school, in the United States which maintains according to your interpretation, that is the Internal Revenue Service's interpretation, a racially discriminatory policy, will lose the tax exempt status?

Mr. Krysa: I object and I don't think he should be required to answer that. The Order here describes the scope of your entire vision and now you're going into any school in the country.

By Mr. Mann: All right. Will Bob Jones University lose it?

Mr. Krysa: He has already answered the question. We object to the form of the question.

Mr. Mann: And what was your answer to it?

Mr. Krysa: Do you want to have your answer read back?

The Witness: Yes.

(Whereupon, the answer was read back by the reporter.)

Mr. Krysa: That is your answer with respect to Bob Jones University.

By Mr. Mann: If the decision were being made today in the Bob Jones University case and Bob Jones University has a racially discriminatory policy, the Service's position would require revocation of admission of exemption and withdrawal of the right to receive dedutible contributions.

All right, sir, if such is the position, if Bob Jones University maintained an admissions policy that excludes black students, under the existing regulations in effect at the Internal Revenue Service, its tax exempt status would be revoked without regard to the number of administrative hearings which might be held, is that correct, sir?

A. If the exclusion of blacks is based solely on race, the present position of the Service would require revocation of recognition of exemption.

Q. If the exclusion of blacks is predicated on religious

principles and not soley on race, what is the position of the Service then?

Mr. Krysa: I object, and I don't think he needs to answer that question. It's beyond the scope of the Order.

Mr. Mann: Well, I'm asking the question; are you instructing him not to answer it?

Mr. Krysa: Yes.

By Mr. Mann: Mr. Connett, are you aware that the Service has recognized the exclusion by Bob Jones University of members of the black race upon religious principles?

A. I am not.

Q. You are not aware? Is there any exception recognized by the Internal Revenue Service to the exclusion or to a racially discriminatory policy by private institutions?

A. I am not aware of an exception to the conclusion based solely on race. The news release, as I recall, indicated that exclusion was permitted on other grounds not racial in nature

Q. What part of that release relates to such?

A. The July 1970 news release states that selectivity of students by a religious seminary having no relation to racial discrimination would not be inconsistent with the IRS statement of position.

Q. The news release of what date?

A. July 19th, 1970. The news release also said and I quote, "The IRS said its July 10th statement does not affect a school's ordinary admissions policies which have no relation to race."

Q. Do you have a copy of that release that you are reading from?

A. Yes.

Q. All right, sir; now in this release it's stated, "The IRS said its July 10th statement does not affect a schools' ordinary admissions policies which have no relation to race."

What is your interpretation of that statement?

Mr. Krysa: I object to the form of the question and object to the question on the basis that it is completely outside of the scope of the examination allowed and I direct the witness not to answer it.

By Mr. Mann: Mr. Connett, what is the purpose of the IRS policy with respect to revocation of the tax exempt status of private schools which practice racial discrimination?

Mr. Krysa: Same objection and again instruct the witness that he is not required to answer by virtue of the scope of the Order allowing his deposition.

Mr. Mann: Now we may as well adjourn. We'll just have to go to the Judge and get him to answer this.

Mr. Krysa: You never have asked the questions I would allow him to answer.

Mr. Mann: I certainly haven't.

Mr. Connett will just have to come back.

Mr. Krysa: Can we ask a question?

Mr. Mann: All right, if you want to.

Mr. Krysa: Has the National Office ever determined or made a decision to revoke the ruling recognizing the tax exempt status of Bob Jones University?

The Witness: It has not.

Mr. Krysa: That was all.

By Mr. Mann: Had you issued instructions to the District Director in Atlanta, Georgia to begin the process of the revocation of the tax exempt status of the Bob Jones University?

A. No, at one time –

Q. All right, sir, go ahead.

A. At one time following the discussion with Wesley Walker I advised the District Director's representative to proceed to process the questionnaire response.

Q. And that was stopped when this action was instituted?

A. Yes, sir.

Q. Prior to the institution of this action, instructions had been given to begin the process for the revocation of the tax exempt status, had it not?

A. No, sir, to process the questionnaire response.

Q. Which leads to the revocation of the tax exempt status?

A. Which might or might not, depending on the facts in the case.

Q. All right, sir, what facts in your opinion, other than a change in the admissions policy of Bob Jones University, would change that ruling?

Mr. Krysa: Object to the form of the question, on the basis that the question calls for an answer outside of the scope of the Order and I advise the witness he is not required to answer that.

Mr. Mann: We would like to make an objection on the continuing objections and instructions not to answer when this is the very meat of the question – of the Order itself.

By Mr. Mann: Mr. Connett, you have indicated that you did advise the District Director in Atlanta to begin the process that would lead to the revocation of the tax exempt status?

A. I don't believe that I had, Mr. Mann. I thought that my answer was that he was instructed to proceed to process the questionnaire response.

Q. Yes, sir, and regardless of how many administrative hearings or processes or procedures you went through, unless Bob Jones University changed its admission policy, under the rulings alleged by the Internal Revenue Service, its tax exempt status would be revoked, would it not?

A. I really don't know, Mr. Mann. It seems to me that it would depend on the state of the law at the moment when the final decision was made.

Q. As the law stands as of this moment?

A. If the decision were made today?

Q. Yes.

A. If you were to assume for purposes of discussion that Bob Jones University had a racially discriminatory admissions policy, the present position of the Service would require, I believe, loss of exemption.

Q. And loss of deductibility on contributions?

A. Yes, sir.

Q. Are you aware of any foreseeable change in the law as the Internal Revenue Service now interprets it?

A. My impression is that in one case, in the case of Green versus Connally, the intervenors had appealed to the Supreme Court.

Q. But you were not aware of any anticipated change or change of the interpretation as now contemplated by the Internal Revenue Service?

A. None other than what would be brought about by a change in judicial findings.

Q. All right, sir. What is the form of the letter that would be sent by the District Director to Bob Jones University with respect to the institution of these administrative procedures?

A. As I mentioned earlier, the first step would be a telephone call presumably and the offering of an opportunity of a conference to discuss the possibility of compliance. Following –

Q. Just a minute. Assume they got the telephone call and Bob Jones University says, "We're staying with the admissions policy we have". Now what is the next procedure?

A. The next proceeding would be to issue a notice to the University advising the University that the District Director proposed to recommend that the revocation – I beg your pardon – proposed to recommend that the recognition of exemption ruling be revoked and further that the District Director was proposing to recommend that advance assurance of deductibility of contributions to the school be suspended.

Q. All right, sir, and assume upon receipt of that letter, Bob Jones University says, "We'll maintain our admissions policy". What then happens?

A. The letter requests the school to indicate whether it protests the proposed ruling, or proposed suspension of advance assurance and that it indicate if it wants a conference in the District office, the opportunity to file a brief in the District office or a conference in the National office.

Q. All right, sir, let's assume at this point that Bob Jones University says, "We maintain our admissions policy but we protest the action of the Internal Revenue Service". What then happens?

A. The District Director would ask whether the University wants a conference in the District office.

Q. If it says, if it desires no conference, what happens?

Mr. Krysa: Let me see if I understand your question to the witness. When you say, "We maintain the admissions policy", that means to exclude blacks solely on the basis of race? Is that what you mean by "admissions policy"?

Mr. Mann: No, sir.

Mr. Krysa: Maybe the witness would like some clarification on what exactly you do mean.

By Mr. Mann: Bob Jones University adopts the position, predicated upon its religious beliefs that it will not admit black students. Predicated on that admissions policy.

A. If I could have further clarification — they won't admit black students by reason of race rather than for some other reason. Is that the hypothesis?

Q. The hypothesis is that, based and predicated upon their religious purposes, they maintain a position by which black students are not admitted to the University — unmarried black students are not admitted to the University.

Mr. Krysa: I object again on the basis that the question calls for an answer outside the scope of the Order and point out to the witness that under the Order allowing the deposition, you are not required to answer that question.

By Mr. Mann: What is the procedure that would then be followed?

A. My recollection is that you stated that the school would waive the right to District conferences but would protest the proposed action?

Q. Yes, sir.

A. The District Director would forward those recommendations to the National office of the Internal Revenue, to the Assistant Commissioner (Technical). Within that organization, the Exempt Organizations Branch would consider the material forwarded by the District Director and if there was tentative agreement with the District Director's recommendations, the National office would contact the school and offer the school the opportunity of a hearing in the National office as well as the opportunity to submit further briefs to amplify their position.

Q. And if Bob Jones University at that point says, "We don't care for hearing or further briefs", what then?

A. The two options that would follow, assuming that the National office concurred in the District Director's recommendation, is that in the final course a technical information release would be issued announcing the suspension of advance assurance of deductibility of contributions and a technical advice memorandum would be written to the District Director advising him of the conclusion of the National office so that he could base his actions upon this technical advice. Because the two actions would be chronologically identical,

As I understand your hypothetical situation, I don't know if there would be a need for the suspension of advance assurance. It could be that it would be waived because of the imminence of dispositive action by the District Director.

Q. This is a publication by the IRS?

A. Yes, sir.

Q. And it is a publication available to the public as well as the District Directors?

A. Yes, sir.

Q. And it would be made known from a public standpoint to any possible contributors?

A. Yes, sir.

Q. And it would be advised from a technical standpoint that a contribution they made or might make would possibly be questioned from a tax deductibility standpoint?

A. That is correct.

Q. All right, sir. And then at this point, what would happen?

A. The District Director, after having received the technical advice from the National office, would consider the technical advice and unless he objected to the technical advice, he would take action pursuant to it.

Q. And that would amount to a directive from the National office?

A. No, advice is the operative word. The District Director can choose to disagree with the advice and enter into a further dialogue with the National office as to the correctness of the conclusion.

Q. Does he have the right to overrule the National office?

A. I think not but if this is a material point, I would like to check the relevant procedure to determine whether he has the right. As a practical matter, I would think that he would tend to accept the technical advice of the Assistant Commissioner (Technical).

Q. Are you aware of any District Director who has overruled the National office?

A. I am aware of instances in which the District Director —

Mr. Krysa: I object. I think we're beyond the scope of the Order.

By Mr. Mann: Mr. Connett, you have been made aware from discussions of the admissions policy of Bob Jones University, have you not, sir?

A. Yes, sir.

Q. Is there any doubt in your mind under the present rulings as they exist today of the Internal Revenue Service that unless Bob Jones University changes its admissions policy, that its tax exempt status will be revoked?

Mr. Krysa: Objection. The question calls for an answer beyond the scope of the deposition as allowed by the Court's Order and I advise him not to answer.

Mr. Mann: That's what I'm here to ask.

Mr. Krysa: No, you're here to ask as pointed out by the Order, "The plaintiff has stated that it wishes to take the deposition of Mr. Connett with reference to whether or not a decision has been reached on the Washington level as to the revocation of the tax exempt status of the plaintiff."

I believe you put that question to the witness and he answered, "No". It seems to me we have been very lenient and every other question is getting very far afield from what the Court allowed here.

By Mr. Mann: Mr. Connett, if Bob Jones University adopts a racially nondiscriminatory policy of admissions, and assuming that it otherwise qualifies as a charitable or educational institution, under the present rulings of the Internal Revenue Service, would it be allowed to retain its tax exempt status?

Mr. Krysa: I object again for the same reason. It's beyond the scope of the Order, clearly far beyond the scope of the Order, and I point out to the witness that the Order defines what you are to be questioned about and that is outside the scope, that is the question is hypothetical and speculative and calls for a legal conclusion, and as I understand the Court ruling, the Court was allowing interrogation to determine a fact, whether or not something has happened or decision has been made.

Mr. Mann: And you instruct him not to answer?

Mr. Krysa: Yes, sir, I do.

By Mr. Mann: To your knowledge has there been prepared a letter or a copy of a letter to be sent to Bob Jones University at any time with respect to its tax exempt status?

Mr. Krysa: I take it you mean other than the November 30th letter which –

Mr. Mann: Yes, other than the November 30th letter.

By Mr. Mann: None other than the November 30th letter of which I am aware.

Q. The letter that you referred to that would be prepared by the District Director and sent to Bob Jones University, is this a form letter or is it a particularized letter?

A. There is no form letter to notify a school of a proposal to recommend revocation of advance assurance so it would be proposed on an individual case.

I am reasonably sure that because of the volume of work that the District Director has, that they would not have reached this school case.

Q. You do not know of such a letter having been prepared?

A. No, sir.

Q. And you do not know, in other words, that such a letter was not prepared?

A. That's correct.

Mr. Mann: I think that's all I have.

Mr. Krysa: Let me see if I can clear up one thing.

Cross Examination

By Mr. Krysa: My understanding of your direct testimony was that at the time this law suit was filed on September 9th, 1971, there were instructions outstanding to the Director's office to proceed to process the questionnaire?

A. No, that is not correct.

Q. All right. I believe I understood that you testified to that so what was the situation at the time this law suit was filed with respect to that matter?

A. I had notified the District Director's representatives following my conversation with Wesley Walker to proceed to process the response but following instructions from Commissioner Walters as a result of his telephone conversations with Fletcher Mann, I again instructed the District Director's office to withhold action until further advice.

Q. Was that the status of this particular case at the time this law suit was filed?

A. Yes, but that instruction was oral and when the law suit was filed, I felt an obligation to make a written direction to make sure that there could be no possible misunderstanding.

Q. And the written direction told them to –

A. To continue to withhold action.

Mr. Mann: Do you have a copy of that?

The Witness: I think I can get one; I don't know if I can make it available.

Mr. Krysa: I haven't seen it and you haven't been called upon to provide anything yet.

Re-direct Examination

By Mr. Mann: Do you know the date of it?

A. No, sir, I'd have to look.

Q. But it was subsequent to September the 9th?

A. If that was the date –

Q. That suit was instituted?

A. Yes, sir.

Q. It was subsequent to the institution of the suit?

A. Yes, sir, that is the written instruction was subsequent. There were outstanding oral instructions.

Q. I understand your testimony that that was the only letter or memorandum that you had prepared in connection with Bob Jones University?

A. Yes, sir.

Q. It is the only one you have received, no written communications?

A. This is to the District Director.

Q. I realize but you tesitifed you received no written communications or memorandums?

A. I think that –

Q. Or copies of them?

A. I think that the National office responsible for notifying the District Director then gave me a copy to show me they had passed my instructions on to the District Director.

Q. One question and I'll be through.

I want to be sure I understand.

You're not aware of any memorandum that has been prepared by the Internal Revenue Service with respect to Bob Jones University and its tax exempt status?

A. No, I don't recall that that question was asked.

Q. I'll ask it now. Are you aware?

A. Yes.

Q. And who prepared that memorandum?

A. I prepared a memorandum for Commissioner Thrower's signature to advise Commissioner Walters of the posture of the case at the time Commissioner Thrower left office so that Commissioner Walters would understand what discussions had taken place before.

Q. All right now, sir. What was the date of that memorandum?

A. I would have to look, Mr. Mann; I don't know.

Q. And did it not in effect state that Bob Jones University was not going to change its admissions policy and that you should proceed?

A. No, sir, that memorandum said that our discussion with Wesley Walker had indicated that consideration was being given to a change in admissions policy and that if it changed its admissions policy to operate on a racially nondiscriminatory basis and publicized that fact, we would recognize the University as continuing to qualify for exemption because they would then have qualified with the Service's requirements.

Q. And if it did not change its policies, what would you recommend?

A. I don't think that the memorandum reached that point.

Q. Who has a copy of that memorandum, sir?

A. I assume I do.

Q. All right, sir, and you indicate you do not recall the date of it?

A. No, sir, I do not.

Q. Was it prior to the institution of this action, September the 9th?

A. Yes, it would have been written while Commissioner Thrower was still Commissioner of Internal Revenue.

Q. You prepared the memorandum for Commissioner Thrower's signature?

A. Yes, sir.

Q. And was it addressed to Commissioner Walters?

A. No, it was addressed, "To my successor", as I recall.

Q. Your successor?

A. Mr. Commissioner Thrower's successor.

Q. Commissioner Thrower's successor, I see.

Mr. Mann: At this time on the record we would like to orally serve a notice on counsel for the government to produce a copy of that memorandum at the hearing to be held in Greenville before Judge Simons on October the 4th, 1971, which oral notice we will follow with written notice, if necessary.

Mr. Krysa: Counsel notes your notice.

Mr. Mann: I think that will do it. Thank you, sir.

Mr. Krysa: I have no further questions.

(Whereupon, at 2:23 p.m., the taking of the deposition of WILLIAM H. CONNETT was concluded.)

(Signature and Certificate omitted)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 71-891

BOB JONES UNIVERSITY,
Plaintiff,

-versus-

JOHN B. CONNALLY, Secretary of the Treasury of the United States, and JOHNNIE M. WALTERS, Commissioner of Internal Revenue,
Defendants.

ORDER

This matter is before the court upon plaintiff's Complaint seeking an injunction *pendente lite*, and upon defendant's Motion to Dismiss plaintiff's Complaint for lack of jurisdiction.

The court received briefs and heard arguments on October 4, 1971, with regard to both the Motions. From the Complaint, affidavits and supporting documents, and the deposition of William H. Connett, Assistant to the Commissioner of Internal Revenue, and from a study of statutory provisions, rules and regulations and authorities involved, the court makes the following Findings of Fact and Conclusions of Law.

Findings Of Fact

1. Bob Jones University is an eleemosynary corporation, organized and granted its certificate of incorporation on November 20, 1952. The University's predecessor was known as Bob Jones College, which was founded near Panama City,

Florida, in 1926. The plaintiff was originally founded and has continued to exist as a fundamentalistic, religious organization which has chosen the field of education, principally at the college level, as the vehicle through which to teach and promulgate its fundamentalistic religious beliefs. The creed of the college as originally founded and the purpose clause of its charter is as follows:

> The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combatting all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Savior, Jesus Christ; his identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.[1]

2. It further appears from the affidavit of Dr. Bob Jones, III, President of the University, as well as from the affidavits of Dr. Bob Jones, Jr., Chairman of the Board, and Dr. R. K. Johnson, Secretary-Treasurer and Business Manager, that the University's fundamentalistic religious beliefs and practices include the belief and principle that God intended that the various races of men should live separate and apart, and that the inter-marriage of different races is contrary to the will of God, and to the teachings of the Holy Scriptures. In

[1]See Page 2 of the affidavit of Dr. Bob Jones, III, and certified copy of certificate of incorporation attached thereto.

keeping with his religious belief and principle, the University has adopted an admissions policy prohibiting the admission of black students to the University.[2] The plaintiff has also adopted a rule prohibiting its students from dating or marrying members of another race, whether students or not. Violation of this rule results in expulsion from the University. The University believes it would be impossible to enforce that rule if the University were to adopt a racially nondiscriminatory admissions policy (affidavit of Dr. Bob Jones, III). The University requires all students to attend daily chapel services at which the religious views and principles of the University are taught, and all classes and meetings held under the University sponsorship are begun and ended with prayer. All students, with inconsequential exceptions, are required to take courses in religion each semester. All faculty members are required to teach and adhere to the religious beliefs and principles of the school, and any member of the faculty or member of the student body teaching or promoting religious beliefs contrary to those of the University is subject to dismissal. The admissions standards of the University relate not only to academic achievement but also to the religious convictions of a given applicant as well. The University does not now accept, and has not in the past accepted, federal or state grants in aid, nor does it participate in any programs financed by the federal or state governments because the University apparently understands that if it did so it would be required to adopt a racially nondiscriminatory admissions policy which would be contrary to its religious beliefs and practices.

3. The University has apparently enjoyed tax exempt status since its formation, although the records of the University do not go back that far in this regard. The record contains a letter dated March 30, 1951,[3] received by the University from the then Deputy Commissioner, advising that it qualified

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[2]One married black part-time student has recently been admitted to the University.

[3]Copy of letter attached to the affidavit of Dr. R. K. Johnson, Secretary-Treasurer and Business Manager of the University.

as a tax exempt organization, which also referred to a similar ruling of April 30, 1942. The record substantiates that there has been no significant change in the University's practices, principles, or policies since that date.

4. News releases of the Internal Revenue Service issued on July 10 and July 19, 1970, constituted the first threat to the University's tax exempt status. Thereafter the University received a letter of inquiry from the District Director of Internal Revenue requesting information concerning the admissions policies of the University with regard to race. A copy of that letter is attached to the affidavit of Dr. Bob Jones, III. The University's reply was in the form of a letter dated December 30, 1970, which is attached to the affidavit of Mr. William H. Connett. During 1971 various conferences and discussions were held between officials of the Internal Revenue Service, including former Commissioner Randolph W. Thrower, and the present Commissioner, Johnnie M. Walters, and attorneys for the plaintiff. These discussions culminated on or about September 8, 1971, when counsel for the plaintiff concluded that a clear threat existed that the University's status as a tax exempt organization was about to be revoked, and that the advance assurance of deductibility of contributions previously given by the Internal Revenue Service to its contributors was about to be withdrawn.

5. The following day, September 9, 1971, the plaintiff instituted this action, alleging that this threatened action would inflict irreparable harm upon the University, that such threatened action was unlawful in that it exceeded the authority vested in the defendants by Congress, was contrary to the provisions of § 501(c)(3) of the Internal Revenue Code, and would be in violation of the First and Fifth Amendments to the Constitution of the United States. Plaintiff, accordingly, requested temporary and permanent injunctive relief from this court.

6. One of the grounds urged by defendants in support of their Motion to Dismiss is that plaintiff has not exhausted the administrative remedies available to it under Revenue

Procedures 68-17 and 69-3. Mr. Connett's affidavit sets forth the administrative procedures which would be employed were this court not to grant injunctive relief. However, from his affidavit and deposition it appears that there remains very little doubt as to the ultimate loss of plaintiff's tax exempt status. In his deposition Mr. Connett states that plaintiff's tax exempt status would be revoked under the existing law, unless the plaintiff chose to change its admissions policy to comply with the requirements of the IRS and admit black students on a nondiscriminatory basis.[4] It is thus concluded that any attempt by the plaintiff to follow these administrative procedures would most probably be a useless act, inasmuch as the decision to revoke the tax exempt status of any organization not willing to adopt a racially nondiscriminatory admissions policy apparently has already been made by the Washington Office of the Internal Revenue Service.

A review of the procedures outlined in Mr. Connett's affidavit indicates that by subjecting itself to these procedures the plaintiff would likely suffer irreparable damage. Mr. Connett reveals a sequential process by which, first, advanced

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[4]Numerous news releases with a Washington dateline have been noted recently in which it is indicated that many private schools in this and other states have been noticed by the IRS that they will lose their tax exempt status unless they certify that they have adopted a racial non-discriminatory admissions policy.

Furthermore, plaintiff submitted the affidavit of Mr. Joe N. Cocke, who states that the IRS withdrew its prior assurance of deductibility of contributions made to Fayette Academy, and thereafter revoked the Academy's tax exempt status. Attached to his affidavit is a letter dated January 12, 1971, signed by the District Director of the Internal Revenue Service, Atlanta, Georgia. The District Director referred to a previous letter dated December 3, 1970, notifying the Academy of the suspension of advance assurance of deductibility of contributions to that organization pending final determination of its status. The letter goes on in Paragraph 3 to advise the academy of its right to protest and its rights to have conferences at both the District and National Office levels. The fourth paragraph of that letter states: "A conference at either the District or National Office would probably serve no useful purpose if you have no intention of adopting a racially nondiscriminatory admissions policy. . . ."

assurance of deductibility of contributions would be withdrawn, and second, the University would be denied tax exempt status and then taxes assessed and collected. Undoubtedly a period of many months would elapse between the time that advanced assurance of deductibility of contributions would be withdrawn and a tax finally assessed and collected, thus requiring redress in the courts pursuant to 26 U.S.C.A. 6213; 28 U.S.C.A. 1346(a)(1), 1491; 26 U.S.C.A. 6532, 7452. It is to be expected that while the Internal Revenue Service is conducting administrative conferences leading to the assessment and collection of a tax, the plaintiff's contributions, upon which it relies heavily, would be curtailed, if not eliminated altogether. Under these circumstances these administrative procedures would serve no useful purpose.

The plaintiff would likely suffer irreparable harm if the threatened action is not enjoined. Plaintiff submitted, in addition to the affidavits previously referred to, the affidavit of another of its counsel, O. Jack Taylor, Jr.; John E. Fowler, C.P.A., employed by the University for the past twenty-five years or more; Jo Ann Hatcher, donations secretary to the University; and affidavits from ten of its contributors. The force and effect of these affidavits is as one might expect: the financial lifeblood of the University to a substantial extent is dependent upon contributions made to it. It appears that cash donations are received daily. During the twenty-day period from September 1 through September 20, 1971, the University received individual cash gifts totaling $29,695.83. The cash contributions for the year, from August 30, 1970 to August 28, 1971 exceeded $500,000. Attorney Taylor's affidavit attaches correspondence passing between him and counsel for the Nationwide Foundation in the early part of 1971, to the effect that the Nationwide Foundation, which formerly had made matching grants to the University, would, because of the threatened action, no longer continue their program of matching grants. Affidavits from the ten individual contributors stated that their donations to the University materially depended upon their assurance that the same

would be deductible on their individual income tax returns, and that should the Internal Revenue Service withdraw such assurance of deductibility, their respective contributions would be severely curtailed. The affidavits of the officials of the school substantiate the conclusion that should this financial assistance be curtailed, the University's existence would be jeopardized; and that in an effort to make up for its loss of income received through contributions and to replace the moneys expended in attempting to attain a tax-paying status from a records standpoint (estimated by the accountant Fowler to be between $80,000 and $100,000), the University would be forced to revise upward its fees and tuition, with the attendant disruption in the educational programs of its students, and the curtailment of future applications caused by such increases. In addition, the University has a funded indebtedness, as well as an expansion program, which would be placed in jeopardy, and members of its faculty and staff would undoubtedly suffer through the possible loss of current income and retirement programs.

The defendants contend that no irreparable harm would result to the University because of the fact that it could compute and pay its tax and seek refund or otherwise contest the same in either the district court or the tax court. As previously indicated, however, the real harm – the loss of contributions and its attendant consequences – would already have transpired and could not realistically be remedied by this process.

7. The statutory provisions under which plaintiff previously has been granted tax exemption, § 501(c)(3), of the Internal Revenue Code of 1954, provide exemption from taxation for:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit

of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Conclusions Of Law

1. The court has jurisdiction over the parties and the subject matter of this action. 28 U.S.C. 1331, *et seq.*

As previously indicated, the court has concluded that this action is not premature because of a failure, on plaintiff's part, to exhaust available administrative remedies. Further, the court concludes that it is not barred from entertaining jurisdiction of the within action because of defendant's other objections thereto. Defendants contend that plaintiff's action seeks an injunction to avoid the assessment and collection of taxes and is barred by the anti-injunction statute, § 7421 (a), and cannot be the subject of a declaratory judgment proceeding, since 28 U.S.C. 2201 permits such actions except those "with respect to federal taxes"; and, that it is also barred by the principle of sovereign immunity.

Up until now there has been no assessment or even an attempt at assessment of any tax insofar as Bob Jones University is concerned. The defendants admit that assessment procedures would not be commenced until the administrative procedures which they contend are available to the plaintiff have been exhausted; and that no tax would be due if plaintiff's exempt status were revoked as of this date until some time in the calendar year 1972. Technically this suit does not involve an attempt to enjoin the assessment and collection of a tax. Recognizing this, the defendants argue that the word "assessment" includes all acts that are necessarily prerequisite to the actual act of making the assessment, and rely upon *Calkins v. Smietanka*, 240 F. 138 (1917); *Campbell v. Guetersloh*, 287 F. 2d 878 (5 Cir. 1961); *Wahpeton Professional*

Services, P.C. v. Kniskern, 275 F. Supp. 806 (D.C.N.D. 1967); *Koin v. Coyle*, 402 F. 2d 468 (7 Cir. 1968); *Chester v. Ross*, 231 F. Supp. 23 (N.D. Ga. 1964), aff'd. 351 F. 2d 949 (5 Cir. 1965); *Cooper Agency, Inc. v. McLeod*, 235 F. Supp. 276 (D.C.S.C. 1964). In each of these cases, an attempt was made to enjoin an action on the part of the Internal Revenue Service directly involved with either the assessment or collection of a tax. In *Calkins* the injunction sought to prevent the production of records during an audit. In *Campbell* the injunction sought to prevent the Service from determining tax due based upon the "bank deposits" method of reconstruction of income. In *Wahpeton*, the action was brought under the declaratory judgment act seeking a declaration as to whether the alleged taxpayer qualified as a corporation and trust for tax purposes. The *Koin* case involved the attempt to assess wagering taxes and involved evidentiary issues thereabout. And in *Chester* there was similarly involved an attempt to suppress the use of evidence because of an injunction procedure where a tax assessment was directly involved.

The court has considered those cases dismissing actions for want of jurisdiction where the question presented involved the tax exempt status of institutions. *Jolles Foundation, Inc., v. Moysey*, 250 F. 2d 166 (2 Cir. 1957); *Kyron Foundation, Inc. v. Dunlap*, 110 F. Supp. 428 (D.D.C. 1952). The court is convinced that the principles enunciated in those cases are not applicable nor controlling here. The plaintiff does not ask this court to substitute its judgement for that of a federal officer acting in his official capacity. The gravaman of plaintiff's Complaint is that the defendants are threatening to act outside of their authority to exercise judgement and discretion which are not within the legal limits of their authority in such circumstances, since they are purporting to act beyond the authority granted by the constitution or by the Congress, and to read into the Internal Revenue Laws powers that are not expressly given and that were never intended by Congress.

If the question here were the applicability of the threatened action to the plaintiff rather than the validity of the action itself, the court would most probably be persuaded to take a different view. If there were no contest as to the legality or the power of the defendants to revoke under existing law plaintiff's tax exempt status because of its admitted racial discriminatory admissions policy, but was instead a case involving the applicability of such a rule to the plaintiff, it would then appear to be a case where this court was asked to preempt discretionary power of a federal officer which it would be powerless to do. However, the plaintiff readily concedes that it practices a racial discriminatory admissions policy, placing it squarely in violation of the avowed policy of defendants. Thus, this is not a case where the defendants or the court must decide the question of whether the University has a racially nondiscriminatory admissions policy. Plaintiff is not challenging the applicability of the rule, but the legality of the rule itself.

Bob Jones University is not seeking a declaratory judgment, but rather seeks to enjoin the defendants from exercising alleged illegal and *ultra vires* power and authority. Consequently, it is concluded that the levy, assessment, and collection of a tax is not the main issue. Plaintiff does not contest the amount or method of any levy, assessment, or collection, or evidence to be used in making such determination of taxes that might become due. Plaintiff is seeking to enjoin what it contends to be illegal and unconstitutional actions or threatened actions on the part of officials of the United States Government which it claims would lead to irreparable harm of plaintiff, the 4,500 students who attend the plaintiff University, some 650 faculty and staff members, and of the public which is served by the existence of the University.

The Supreme Court has decided many cases in which it has stated the obvious purpose for which the anti-injunction statute was enacted. In *Enochs v. Williams Packing Co.*, 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed. 292, the Court said:

> The manifest purpose of Section 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund. In this manner, the United States is assured of prompt collection of its lawful revenue.

The courts have consistently applied this statute in those cases which do not come within the exception thereto, and have refused to entertain jurisdiction of suits seeking injunctions against the levy, assessment, and collection of federal taxes. Many years after the adoption of the original anti-injunction statute, Congress enacted the declaratory judgment act which taxpayers were quick to utilize to avoid the effects of the anti-injunction act. Congress rightfully put an end to such suits by amending the declaratory judgment act by inserting the phrases "except with respect to federal taxes," which removed the jurisdiction of federal courts to hear declaratory judgement proceedings with respect to the levying, assessment and collection of federal taxes.

Jurisdiction of suits of the nature of this case has been exercised by the courts for many years. For instance, see *Hill v. Wallace,* 259 U.S. 44, 42 S.Ct. 453 (1922) and cases cited therein. In *Hill,* plaintiff sought to enjoin the Commissioner of Internal Revenue from imposing a tax on contracts for the sale of grain for future delivery. The Commissioner moved, as he does in the matter before this court, to dismiss the suit, contending that the action was an attempt to enjoin the collection of a tax, contrary to a predecessor of § 7421(a) of the current Internal Revenue Code. The Supreme Court held that such was not the nature of the action brought by the plaintiffs in *Hill.* In doing so, the Court said:

> It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of Boards of Trade through supervision of the Secretary of

> Agriculture and the use of an administrative tribunal. . . . The manifest purpose of the tax is to compel Boards of Trade to comply with regulations, many of which can have no relevance to the collection of a tax at all. . . . The act is in essence and on its face a complete regulation of Boards of Trade, with a penalty of 20 cents a bushel on all "futures" to coerce Boards of Trade and their members into compliance.

Likewise the record in this case supports the conclusion that the primary purpose of acquiring Bob Jones University to adopt a racial nondiscriminatory admissions policy is not to levy, assess, and collect a tax from the plaintiff, but is being done solely for the purpose of complying with a recently espoused policy of the Internal Revenue Service to require certain private educational and religious institutions to adopt and administer racially nondiscriminatory admissions policies and practices. It is obvious that if the plaintiff will agree to the demands of the defendants and change its admissions policy so as to admit blacks on a nondiscriminatory basis, the tax exempt status held by the plaintiff with the express approval of the defendants for a period in excess of forty years will continue in full force and effect.

The conclusion is inescapable that the primary purpose of the defendants in threatening the revocation of the plaintiff's tax exempt status is not to assess and collect taxes, but to compel, through the use or threat to use, taxing powers to require private educational and religious institutions to comply with certain political or social guidelines with regard to the question of racial integration. As such, the plaintiff's action should not be barred by 26 U.S.C. 7421(a), or 21 U.S.C. 2201. In finding that this case is barred neither by the anti-injunction statute nor provisions of the Declaratory Judgment Act, the court is mindful of the decision in *DeMasters v. Arend,* 313 F. 2d 79 (9 Cir. 1963). In *DeMasters,* the taxpayer sought to restrain the Internal Revenue Service from investigating the possible income tax liability for years

barred by the statute of limitations in the absence of fraud. There the court said:

> . . . If appellants were indeed prohibited by Section 7605(b) or the Fourth Amendment from initiating this inquiry, a suit to restrain their unlawful conduct would not be barred by the Doctrine of Sovereign Immunity.

In a footnote the Court stated:

> We are also satisfied that this taxpayer's suit is neither one for declaratory judgment "with respect to federal taxes" precluded by 28 U.S.C.A. 2201; nor an action "for the purpose of restraining the assessment or collection of any tax" precluded by 26 U.S.C.A. 7421(a).

The court also concludes that this action is not barred by the Doctrine of Sovereign Immunity. It has long been recognized that the sovereign cannot act illegally or unconstitutionally and, therefore, if an act or threatened action is unconstitutional or illegal it is not the action of the sovereign and such acts or threatened acts can be enjoined. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949); *United States v. Lee*, 106 U.S. 196 (1882); *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narc.*, 409 F. 2d 718 (2 Cir. 1969). Since the primary thrust of plaintiff's action is that it is seeking to enjoin a threatened illegal and unconstitutional act, it is concluded that the court is not deprived of jurisdiction because of the Doctrine of Sovereign Immunity.

Based on the foregoing the court concludes that defendants' Motion to Dismiss should be denied.

2. Plaintiff's Motion for an injunction *pendente lite* should be granted.

Based on the present record, the court finds that plaintiff has made a prima facie showing that the defendants have surpassed, or are in the process of exceeding, their statutory

authority as granted to them by the Congress in the Internal Revenue Laws.

In this connection, the court is not unaware of the three-judge district court decision in *Green v. Kennedy, et al.*, 309 F. Supp. 1127 (1970). It is concluded that the *Green* case is distinguishable both on its facts and in the legal issues presented therein. In the first place, the plaintiff school here has practiced the admissions policy now in issue for over forty years, whereas, in the *Green* case, the private schools whose tax exempt status was being challenged were only recently established "as an alternative for white students seeking to avoid desegregated public schools." Then, too, the present plaintiff contends, and has introduced substantial evidence in support of such proposition, that its admission policy is, and always has been, based on religious considerations.[5] The *Green* court was not confronted with such a substantial conflict between constitutional rights – that is, the right of religious organization to practice its teachings without being treated any differently than any other religious group by the United States government versus the right not to be discriminated against on the basis of race – when it reached its decision. In point of fact, the *Green* court not only was not faced with this issue, but also was without the benefit of the reasoning and holding contained in the more recent case of *Walz v. Tax Commission*, 397 U.S. 664, 25 L.Ed. 2d 697, 90 S.Ct. 1409 (1970); the case plaintiff relies upon so heavily in support of its interpretation of the aforesaid constitutional right it advances. In the *Walz* case the Supreme Court held that "for the government to exercise at the very least this kind of benevolent neutrality, [tax exemption,] toward churches and religious exercises generally *so long as none was favored over others and none suffered interference*" was not a violation of the religious clauses of the First Amendment. In this context, and for the sole purpose of considering this request for temporary relief, this court concludes that the rationale and the holding of the *Green* case are not controlling herein.

[5]This is but one of several constitutional rights that plaintiff contends will be violated if its tax exempt status is revoked.

Another reason why the court is disposed to grant plaintiff's Motion is that upon balancing the equities and weighing relative hardships that would be incurred by the respective parties if the relief asked for is granted or denied, it concludes that the equities lie in favor of granting the temporary injunction. In the event temporary injunctive relief is denied to the plaintiff, and should it prevail after a trial on the merits it could not, in all likelihood, recover the loss of contributions which it probably would experience because of the threat of loss of its tax-exempt status. On the other hand, should the defendants prevail in the trial they would not have incurred any substantial monetary expense, loss, or other irreparable harm, since any taxes that plaintiff might then be required to pay would not be due and owing until April 15, 1972, a date long after a decision on the merits should have been reached; and they would have been enjoined from revoking plaintiff's tax-exempt status only for a short period of time. Moreover, as the court previously observed, the revocation of plaintiff's tax-exempt status is not being attempted for the purpose of raising additional tax revenues, but for the purpose of compelling plaintiff to adopt a non-discriminatory admission policy. Whether or not the defendants will ultimately achieve this goal is not a question for this court to answer, but in view of the aforesaid substantial clash of constitutional guaranties involved in this controversy this court does believe, and accordingly decides, that if in fact the outcome of this litigation will have any effect on the attainment of this goal such a result should come only after a trial on the merits has been had. It is, therefore,

Ordered that the defendants' Motion to Dismiss be, and it hereby is denied; and, it is further

Ordered that the defendants, their agents, servants, deputies, employees, successors in office and all persons in active concert with them, are hereby enjoined ***pendente lite*** from revoking or threatening to revoke the tax exempt status of plaintiff, and further enjoined ***pendente lite*** from withdrawing advanced assurance deductibility of contributions solely be-

cause of the admissions policy of plaintiff pending a final hearing and determination of this cause on the merits.

CHARLES E. SIMONS, JR.
United States District Judge

Columbia, S. C.
November 17, 1971.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO. 71-891

ANSWER

John B. Connally, Secretary of the Treasury of the United States and Johnnie M. Walters, Commissioner of Internal Revenue, defendants in the above action, by their attorney, in answer to the Complaint filed herein admits, denies and alleges as follows:

I

Admits.

II

Denies.

III

Admits.

IV

Denies except admits that the defendants' predecessors had issued a ruling recognizing the plaintiff as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954.

V

Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph V.

VI

Denies except admits that the plaintiff has adopted an admissions policy which excluded the admission of members of the Negro race.

VII

Denies except admits that the defendants published its policy relative to the tax exempt status of private schools, including religious schools, which are contained in news releases dated July 10, 1970 and July 19, 1970 and alleges that said news releases which are a part of the record here speak for themselves.

VIII

Denies and alleges that the letter of November 30, 1970 referred to in paragraph VIII speaks for itself.

IX

Denies except alleges that it has no knowledge or information sufficient to form a belief as to the truth of paragraph 9(b).

X

Denies.

XI

Denies.

XII

Denies.

XIII

Denies.

XIV

Denies.

XV

Denies.

XVI

Denies.

Wherefore, the defendants having answered, prays that the Complaint be dismissed with prejudice.

(Signature and Certificate of Service omitted)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

NOTICE OF APPEAL
C/A No. 71-891

Notice is hereby given that John B. Connally, Secretary of the Treasury of the United States and Johnnie M. Walters, Commissioner of Internal Revenue, defendants above named, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order of the United States District Court, District of South Carolina, Greenville Division, which was entered on November 17, 1971.

JOHN K. GRISSO
United States Attorney
JAMES D. McCOY, III
Assistant U.S. Attorney
Attorneys for Appellants

Greenville, South Carolina
January 14, 1972.

UNITED STATES COURT OF APPEALS
For The Fourth Circuit
No. 72-1075

BOB JONES UNIVERSITY, *Appellee*,
v.
JOHN B. CONNALLY, Secretary of the Treasury of the United States and JOHNNIE M. WALTERS, Commissioner of Internal Revenue, *Appellant*.

Appeal from the United States District Court for the District of South Carolina, at Greenville.
Charles E. Simons, Jr., District Judge.

(Argued October 4, 1972 Decided January 19, 1973)

Before BOREMAN, WINTER and BUTZNER, Circuit Judges.

Leonard J. Henzke, Jr., *Attorney, Department of Justice*, (John K. Grisso, *United States Attorney*, Scott P. Crampton, *Assistant Attorney General*, Meyer Rothwacks, Grant W. Wiprud, *Attorneys, Department of Justice*, Tax Division, on brief) for Appellants; J. D. Todd, Jr., (Wesley M. Walker, James H. Watson, O. Jack Taylor, Jr., and Leatherwood, Walker, Todd and Mann on brief) of Appellee.

WINTER, Circuit Judge:

Bob Jones University (Jones University), a non-profit educational institution which concededly practices racial discrimination in the admission of students, songht a preliminary and permanent injunction to prevent Treasury officials from terminating its tax-exempt status. Treasury officials had begun administrative proceedings to that end in accordance with an announced policy of withdrawing tax-exemption and deductibility-assurance rulings of schools having racially discriminatory policies, when suit was filed. The district court denied the Treasury officials' motion to dismiss for lack of jurisdiction and granted an injunction *pendente lite*. Because we conclude that the district court lacked jurisdiction under

§ 7421 of the Internal Revenue Code of 1954, 26 U.S.C.A. § 7421 to grant the requested relief, we reverse and remand the case for dismissal of the complaint.

I

Jones University is a fundamentalist religious organization which subscribes to the belief that God intended the various races of men to live separate and apart, and that intermarriage of different races is contrary to God's will and the teaching of the Scriptures. In furtherance of these beliefs, Jones University prohibits the admission of black students, it prohibits students it does admit from dating or marrying members of another race, whether students or not, and it accepts some Oriental students but only on condition that they will not date outside of their own race. Jones University has enjoyed tax-exempt status since at least April 30, 1942, under § 501(c)(3) of the Internal Revenue Code of 1954, 26 U.S.C.A. § 501(c)(3) and the predecessor code.

On July 10 and July 19, 1970, the Internal Revenue Service (IRS) announced publicly that it could no longer legally justify allowing tax-exempt status to private schools which have racially discriminatory admission policies, nor could it treat gifts to such schools as tax-deductible charitable contributions. It also stated that, although the non-discrimination requirement would not affect a school's ordinary admissions policies which had no relation to race, the requirement would prohibit allowance of the tax benefits to church-related schools which discriminated on the basis of race. On November 30, 1970, IRS wrote a letter of inquiry to each school in the United States, including Jones University, announcing its new policy and requesting each school to furnish specific information regarding its admissions policy within thirty days. Jones University responded that it did not admit blacks.

There followed various communications and meetings between IRS and representatives of Jones University, each refusing to deviate from its original position. The suit was filed on September 9, 1971, and no further administrative

steps were taken. Had suit not been filed there would have been further conferences at the level of the District Director and the National Office in Washington. Only if Jones University declined to abandon its racially discriminatory policies and IRS declined to alter its announced policy would Jones University's tax-exempt status be revoked, its records audited and a notice of proposed tax deficiencies issued. Even then, Jones University would have additional opportunities to seek administrative relief. See 9 Mertens Law of Federal Income Taxation (Rev.) §§ 49.110, 49.112, 49.114, 49.115, 49.118-49.124. If administrative relief was not forthcoming, IRS would issue a notice of deficiency, the legality and correctness of which could be litigated in the Tax Court, 26 U.S.C.A. § 6213, or, alternatively, Jones University could pay the tax and sue for a refund on the ground of illegality, 28 U.S.C.A. § 1346; 26 U.S.C.A. § 7422.

II

The controlling statute reads;

> § 7421. Prohibition of suits to restrain assessment or collection
>
> (a) Tax.—Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

The exceptions in the statute are inapplicable: §§ 6212(a) and (c) and 6213(a) permit suits in the Tax Court to litigate the legality and correctness or deficiency assessments and § 7426(a) and (b) (1) relates to foreclosure proceedings and judicial sales with regard to property on which the United States has a tax lien and permits the United States to be joined and participate in cases of this nature.

Jones University contends, and the district court concluded, that the statute is inapplicable because no formal as-

sessment of deficiencies had been made and thus the suit did not seek to enjoin an "assessment or collection" of any tax. We disagree. First, the administrative proceedings which had as their object the withdrawal of tax-exemption and deductibility-assurance rulings are directly involved with the assessment and collection of taxes from Jones University and those making contributions thereto. If those rulings are withdrawn, Jones University will be liable for taxes on any net income which it realizes and contributors to Jones University may not deduct from their gross income the amounts of their contributions. Either event would result in an increase in taxes.

A number of cases hold, or make clear, that a suit to enjoin the withdrawal of tax-exemption rulings, the withdrawal of which would ultimately result in potentially greater tax revenues, constitutes a suit to enjoin the "assessment" of a tax within the meaning of § 7421, and we are persuaded to follow them. *J. C. Penney Co. v. United States Treasury Dept.*, 439 F.2d 63 (1971), aff'g 319 F.S. 1023 (S.D. N.Y. 1970), cert. den. 404 U.S. 869 (1971), *Koin v. Coyle*, 402 F. 2d 468 (7 Cir. 1968); *Kennedy v. Coyle*, 352 F.2d 867 (7 Cir. 1965); *Zamaroni v. Philpott*, 346 F.2d 365 (7 Cir 1965); *Crenshaw County Private School Foundation v. Connally*, — F.S. — (M.D. Ala 1972) (on motion to dismiss); *Horton v. Humphrey*, 146 F.S. 819, 821 (D. D.C.), aff'd 352 U.S. 921 (1956) (per curiam). The common sense of the matter is that where, as we have shown, the necessary result of granting the relief prayed would be to prevent the assessment of any tax, § 7421 is applicable.

The circumstances under which § 7421 is not to be applied, when it would otherwise appear to be applicable, are spelled out in *Enochs v. Williams Packing Co.*, 370 U.S. 1 (1962). The test to permit a taxpayer successfully to enjoin the assessment or collection of a tax is twofold: first, he must show irreparable injury to himself if collection were effected, and second, he must show that "under no circumstances could the Government ultimately prevail" in its assertion of tax liability. 370 U.S. at 7. Otherwise, his remedy is to litigate the

validity or amount of the tax by the statutory routes, i.e., appeal of assessment, or payment of the tax and suit for refund.

We have no doubt that Jones University will suffer irreparable injury if withdrawal of its tax-exempt status is effected even if it should ultimately prevail in its argument that its tax-exempt status may not legally be disturbed. Of course, the tax on any net income which may be imposed would be recoverable, but we would be naive indeed not to recognize the substantial portion that contributions play in the gross income of any institution of higher learning and the adverse effect on those contributions if their deductibility for income and estate tax purposes of the donors is disallowed. If Jones University is required to litigate its tax-exempt status after that status has been withdrawn, we can predict with confidence that during the period of litigation it will lose gifts and contributions which will never be recoverable even if it is successful in having its tax-exempt status restored. Thus, the first test of *Williams Packing*, irreparable injury, is met, and we consider the second.

We cannot conclude that "under no circumstances" could IRS be successful in withdrawing Jones University's favorable tax rulings. Although we decline the invitation of counsel for Jones University, extended in oral argument, to decide this case finally on the question of whether Jones University is entitled to tax-exempt status, and consequently we are not to be understood as expressing any view on the ultimate merits of the dispute between IRS and the taxpayer, the recent decision in *Green v. Connally*, 330 F.S. 1150 (D. D.C. 1971), aff'd per curiam sub nom. *Coit v. Green*, 404 U.S. 997 (1971) makes apparent our conclusion. *Green* was a class action by Negro parents of school children attending public schools in Mississippi to enjoin U.S. Treasury officials from according tax-exempt status and deductibility of contributions to private schools in that state which discriminated against Negro students. The relief prayed was granted and on appeal the Supreme Court affirmed per curiam.

The essence of the decision of the D. C. district court may be distilled as follows: Section 501(c) (3) of the Internal Revenue Code, in granting tax-exempt status to "religious" and "educational" institutions requires that they also satisfy the common law concept of "charitable." At common law a charitable trust cannot be created for a purpose which is illegal or whose accomplishment would tend to frustrate some well-settled public policy. Hence there is presently serious doubt, in view of shifting racial attitudes as reflected in legislation and court decisions, that a charitable trust can legally be established, or an existing trust enforced, which establishes racially discriminatory educational institutions. Federal tax exemptions and deductions are generally not available for activities contrary to declared federal public policy. In the light of the Fourteenth Amendment, the decisions of the Supreme Court on the subject of school desegregation and the Civil Rights Act of 1964, the exemptions and deductions provided for charitable educational institutions are not available for private schools discriminating on grounds of race.

Because of the breadth of these holdings and their acceptance by the Supreme Court, we cannot conclude that IRS's contemplated withdrawal of tax-exemption and deductibility-assurance rulings is frivolous or that IRS "under no circumstances" may ultimately prevail. It follows that the second requirement of *Williams Packing* has not been met and § 7421 is a complete bar to maintaining the action.

A final comment is necessary. While the district court found, and the dissenting member of the panel stresses, that the "primary purpose" of the Treasury officials in threatening to revoke Jones University's favorable tax status was not to assess and collect taxes but to exact compliance with certain political or social guidelines, i.e., discontinuance of racial discrimination, we think that the finding is irrelevant to the proper disposition of this case. Substantially the same argument was made and rejected in *Bailey v. George*, 259 U.S. 16 (1922). There the Court prohibited enjoining a collector

of internal revenue from collecting the Child Labor Tax despite the argument that the tax was not for the purpose of raising revenue, but for the purpose of regulating child labor. In the *Bailey* case there was even more reason to accept the argument than in the case at bar because on the same day that Mr. Chief Justice Taft wrote that an injunction against the collection of the tax would be improper, the Court ruled, again in an opinion by Mr. Chief Justice Taft, that the Child Labor Tax was unconstitutional. Child Labor Tax Case, 259 U. S. 20 (1922). Hence, we deem rejection of the argument in *Bailey* as conclusive here.

Similarly, in *Singleton v. Mathis*, 284 F.2d 616 (8 Cir. 1960), the Court affirmed the denial of an injunction against the director of internal revenue who was proceeding to collect a gaming tax of $250 on each of two pinball machines. It appears to be obvious that the purpose of the tax was not to raise revenue, but was to control gambling because a $10 tax was the amount assessed against amusement devices by the same statute.

Accordingly, we reverse the judgment of the district court and remand the case for dismissal of the complaint.

REVERSED AND REMANDED.

BOREMAN, Senior Circuit Judge, dissenting:

For the reasons cogently stated by the district court in *Bob Jones University v. Connally*, 341 F. Supp. 277 (D. S.C. 1971), I respectfully dissent. I would add the following comments and observations.

Under § 7421 of the Internal Revenue Code, as interpreted in *Enochs v. Williams Packing Co.*, 370 U.S. 1 (1962), the burden upon one seeking to enjoin the collection of a tax is huge, indeed. A showing of irreparable harm, "such as the ruination of the taxpayer's enterprise," says the Court, 370 U.S. at 6, is *not* enough. It must be shown that "under no circumstances could the Government ultimately prevail." 370 U.S. at 7. It would appear obvious that, as a practical

matter, such a standard could possibly be met only in the most exceptional and unusual circumstances.[1]

The reason for this exceptional administrative power has been found in the "manifest purpose" of § 7421, *i.e.*, that the United States must be "assured of prompt collection of its lawful revenue." *Williams Packing Co., supra,* 370 U.S. at 7. However, the United States is not primarily concerned here with the collection of revenue. The district court expressly found that the "primary purpose" of the Treasury officials in threatening to revoke the University's tax exempt status and tax deductible benefits to donors is *not* to assess and collect taxes, but through the use of taxing powers "to require private educational and religious institutions to comply with certain political or social guidelines." 341 F. Supp. at 284.

The University contends, *inter alia,* that the threatened actions of the Treasury officials would violate the First Amendment in that such actions would (1) deprive the University of the free exercise of its religious beliefs and, (2) promote, benefit and establish other religions. It certainly is not to be assumed that the Commissioner is possessed of "administrative expertise" with respect to the question presented, or that his legal opinion is in any way entitled to exceptional weight. Indeed, it would appear to me that the threatened acts of the defendants may well be subject to serious challenge as arbitrary and capricious and beyond the scope of their statutory power and authority.[2]

The majority decision would permit the Government to irreparably damage the University by actions taken upon a legal determination by the Commissioner not directly related to any "tax law," for a purpose not directly related to the

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[1]For instance, it is unlikely that this court would assume to state positively, in advance, what the Supreme Court would hold under *any* given set of circumstances. To do so would be presumptuous, indeed.

[2]The district court found that the University "has made a prima facie showing that the defendants have surpassed, or are in the process of exceeding, their statutory authority as granted to them by the Congress in the Internal Revenue Laws." 341 F.Supp. at 285.

collection of any tax, upon the merest chance that the Commissioner might be right. On the facts of this case, I can find no reason, purpose or justification for permitting the Government, absent proper judicial scrutiny going substantially beyond the "under no circumstances" test of *Williams Packing Co.*, to so proceed against the University. Surely such was not the intent of Congress in enacting § 7421, nor the meaning of the Supreme Court in *Williams Packing Co.*

Under the blanket protection of unfettered authority over the assessment and collection of taxes claimed and assumed by the Treasury officials, they are undertaking to interfere with and destroy the constitutionally mandated free and meaningful exercise and practice of the long established, widely publicized and unchallenged religious beliefs of Bob Jones University. To permit such threatened action in these circumstances without affording the University a right to judicial consideration would tend to demonstrate that the age old phrase – *"The power to tax is the power to destroy"* – is literally true.

No case is cited by the Government which applies the strict *Williams Packing Co.* tests in circumstances similar to those in the instant case. I reach the conclusion that the application of that test here may well present a question as to the constitutionality of § 7421.

IN THE
UNITED STATES COURT OF APPEALS
for the Fourth Circuit

No. 72-1075

PETITION FOR REHEARING IN BANC

Pursuant to Rule 40 of the Federal Rules of Appellate Procedure, the Appellee, Bob Jones University, respectfully petitions this honorable court for a rehearing of the Appeal in the above entitled cause, and in support of this Petition represents to the Court as follows:

I

The Appellee respectfully submits that this Court overlooked or misapprehended the necessity for the application of the Anti-injunction Statute, 26 U.S.C.A. 7421 and the rule of *Enochs v. Williams Packing Co.*, 370 U.S. 1, 82 S. Ct. 1125 (1962), the lower court having found that this case is indeed not one seeking a restraint of an assessment or seeking to restrain any collection procedures. The record in this case is clear, unequivocal and uncontradicted that the so-called tax would never be assessed or collected should the University abandon its recognized religious beliefs and change its admissions policy. The reason for the rule of the *Williams Packing* case, namely, that the Government must be assured of prompt collection of its lawful revenue, has no application to the facts of this case since it is crystal clear that if the University would just abandon its religious beliefs and change its admissions policy, no tax would be assessed and no change in its tax exempt status would be made.

Furthermore, the Court in *Williams Packing* recognized that in a situation such as is present here ". . . the exaction is merely in 'the guise of a tax'." citing *Miller v. Standard Nut Margarine Co. of Florida*, 284 U.S. at 509, 52 S.Ct. at 263, the reason for the Anti-injunction Statute is lacking and thus, it is not applicable. Thus, the precise point the Uni-

versity makes here was recognized by the Supreme Court in the case relied upon in the majority opinion.

The facts of this case are far more closely related to those in *Miller v. Standard Nut Margarine Co. of Florida*, 284 U.S. 498 52 S.Ct. 260, than to the *Williams Packing* case, and in the *Nut Margarine* case, injunction was held properly granted. In *Nut Margarine* the Court stated:

> And this court likewise recognizes the rule that, in cases where complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence, a suit may be maintained to enjoin the collector. 248 U.S. p. 509.

Although admittedly this rule was restricted somewhat in *Williams Packing*, *Williams Packing* does not permit the result reached in the majority opinion of this case, which would completely deprive a litigant of the protection of the courts, no matter what the equities and no matter what irreparable harm might result.

Although the relief prayed for could ultimately result in the prevention of assessment and collection of a tax, clearly the government action is aimed, not at collection of revenues, but directed to forcing a change in religious beliefs and practices. In no case cited by the Government or relied upon by the majority opinion was irreparable harm together with fundamental constitutional rights asserted. In *J. C. Penney Co. v. U.S. Treasury Department*, 439 F.2d 63 (1971), injunctive relief was sought to prevent an investigation under the Anti-dumping Act. No constitutional issue was raised, no irreparable harm found, an adequate remedy found available, and no discussion of *Williams Packing* was made in *Penney*.

In *Koin v. Coyle*, 402 F.2d 468 (7th Cir. 1968), the Court found an adequate remedy at law. Similarly, in *Kennedy v. Coyle*, 352 F.2d 867, (7th Cir. 1965), the taxpayer was found to have ". . . a plain, adequate and complete remedy at law."

Zamaroni v. Philpott, 346 F. 2d 365 (7th Cir. 1965) involved the use of allegedly illegally seized evidence to which taxpayer could later object. *Horton v. Humphrey*, 146 F. Supp. 816 (D.D.C.) aff'd 352 U.S. 921 (1956) (per curiam), involved the Antidumping Act where an adequate remedy was found available in the Customs Court. The far-reaching freedom of religion issue presented by the University here, was not available in *Crenshaw County Private School Foundation v. Connally*, F. Supp. (M.D. Ala. 1972).

Thus, in no case has the Anti-injunction Statute been used to prevent judicial redress of a flagrant and obvious attempt to tax religious belief and practice where admittedly irreparable harm will result. The oft-quoted phrase of Mr. Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 431, "The power to tax involves the power to destroy" is most applicable here, particularly because the University's most precious constitutional rights are in the process of destruction by taxation.

II

The Appellee respectfully submits that this Court has overlooked, misapprehended or incorrectly applied the decision of the United States Supreme Court in *Enochs v. Williams Packing Co., supra*. The majority opinion of this Court acknowledges that the University will suffer by even a temporary change in its tax-exempt status, irreparable harm. The opinion states on Page 8, "We have no doubt that Jones University will suffer irreparable injury if withdrawal of its tax-exempt status is effected even if it should ultimately prevail in its argument that its tax-exempt status may not legally be disturbed." The Court then held that it could not be concluded that under no circumstances could the Government be successful in withdrawing the University's favorable tax rulings. The District Court held that the University has made a prima facie showing of the unconstitutionality of the Government's threatened action, and it is respectfully submitted that such prima facie showing is sufficient to satisfy the

second test of *Williams Packing*. The application of the second test, as made in this decision, will effectively deprive any litigant from successfully seeking an injunction since, as pointed out in Judge Boreman's dissenting opinion, it would be presumptuous indeed for any District Court or Court of Appeals to state positively in advance what the Supreme Court would hold under any given set of circumstances.

III

The Appellee respectfully submits that this Court misapplied or misapprehended the Anti-injunction Statute, 26 U.S.C.A. 7421, in that the application of such statute under the facts of this case would be violative of the Constitution of the United States and it would deny the University due process of law. As found by the District Court and as conceded by the majority opinion in this Court, the procedure sought to be followed by the Government would result in irreparable harm to the University, without any recourse to judicial review prior to its imposition, and despite the fact that there is no statutory authority for the action of the collector in attempting to revoke the tax exempt status of the University on the grounds which he attempts to use. Of paramount significance in this case is the fact that such irreparable harm is inflicted as a result of the University's exercise of a fundamental constitutional right, the right to freely exercise its religious beliefs without punitive Government action. To deny the University, upon penalty of losing its tax exempt status, the most precious freedoms guaranteed by the Constitution, without a chance to be heard and without any judicial scrutiny is a startling example of the denial of due process.

The application of 26 U.S.C.A. 7421 to the facts of this case would vest enormous and unrestrained power in the executive under our constitutional system of checks and balances. As stated so cogently in the dissenting opinion of the Senior Circuit Judge of this Court, "Indeed, it would appear to me that the threatened acts of the defendants may

well be subject to serious challenge as arbitrary and capricious and beyond the scope of their statutory power and authority." As further stated by Judge Boreman, "Under the blanket protection of unfettered authority over the assessment and collection of taxes claimed and assumed by the Treasury officials, they are undertaking to interfere with and destroy the constitutionality mandated free and meaningful exercise and pratice of the long established, widely publicized and unchallenged religious beliefs of Bob Jones University. To permit such threatened action in these circumstances without affording the University a right to judicial consideration would tend to demonstrate that the age-old phrase – *'The power to tax is the power to destroy'* – is literally true."

It is well settled that due process requirements are applicable to the taxing powers of the Federal Government. *Heiner v. Donnan*, 285 U.S. 312, 52 S.Ct. 358. In a long series of cases, the Supreme Court has continuously recognized and reaffirmed that the constitutional right of procedural due process requires a hearing. " '[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.' *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (Frankfurter, J., concurring)." *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S.Ct. 507, (1971). Furthermore, it is well settled that the due process right to a hearing must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187 (1965). The hearing required must be before an impartial tribunal. *Ward v. Village of Monroeville, Ohio*, 93 S.Ct. 80 (1972). The recent Supreme Court decision in *Ward* is particularly significant here. There the Court held that due process was denied where the Mayor of Monroeville who had general responsibility for the financial affairs of his Village sat as Judge in the Mayor's Court which produced a substantial amount of the revenues used by the City from fines collected. Certainly, to subject the University, without judicial scrutiny, to administrative proceedings before the

Commissioner of Internal Revenue charged by law with the collection of revenues would place it before the most partial tribunal. In such a situation the position of the Commissioner is much like that of the Mayor of Monroeville. The University's position would be all the more constitutionally objectionable because the Commissioner would be called upon to decide constitutional questions out of his field of expertise and arguments which he has apparently rejected.

The dismissal of the University's suit would leave it at the mercy of the Internal Revenue Service which has promulgated the ruling offensive to the University and actively sought to impose its will upon the University. In this case the Government seeks to be judge, jury and executioner. The University respectfully submits that to subject it to the unfettered power of the Internal Revenue Service without judicial supervision constitutes a patent and gross denial of constitutionally mandated due process.

IV

The Appellee respectfully submits that this Court misapplied or misapprehended the rulings of the Supreme Court in *Bailey v. George*, 259 U.S. 16 (1922) and the *Child Labor Tax* case, 259 U.S. 20 (1922), in that in those cases there was no finding of irreparable harm. There a suit for refund would restore the status quo and there no First Amendment rights were involved. The refund suit available in *Bailey* was all the more adequate in view of the Court's decision in the *Child Labor Tax* case. With the taxing statute declared unconstitutional, one would certainly expect ready redress in a refund suit.

Here the University can never recover its loss of contributions should the Government be unrestrained. As recognized by the majority opinion, this loss, for which there is no remedy, would affect contributions which constitute a substantial portion of the income of Bob Jones University.

V

The Appellee respectfully submits that in attempting to apply the rule of *Williams Packing*, the Court overlooked or misapprehended the established fact that the Commissioner of Internal Revenue has granted a tax exempt status to Appellee since at least 1942 and that there has been no change in either the admissions policy of Bob Jones University or § 501(c)(3) of the Internal Revenue Code. *Miller v. Standard Nut Margarine Company*, 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed. 422.

VI

The Appellee respectfully submits that this court misapplied or misapprehended the decision of the United States Supreme Court in *Williams Packing, supra*, by failing to reach the merits of this case and thus failing to decide that "Under no circumstances could the Government ultimately prevail." The University has raised significant and far-reaching statutory and constitutional issues as recognized by the District Court and the Senior Circuit Judge of this court. To decide the second test of *Williams Packing* without thorough consideration of these issues is inappropriate here. The reliance by the court upon the decision of *Green v. Connally*, 330 F. Supp. 1150 (D.D. C. 1971), aff'd per curiam sub nom. and *Coit v. Green*, 440 U.S. 997 (1971), is misplaced. The issues raised by the University here were not involved in *Green*, and the *Green* court specifically refused to consider the ramifications of the injection of First Amendment rights into that case. In connection with First Amendment rights, the *Green* court recognized that religious freedoms may be involved.

> The special constitutional provisions ensuring freedom of religion also ensure freedom of religious schools, with policies restricted in furtherance of religious purpose. . . . We are not called upon to consider the hypothetical inquiry whether tax-exemption or tax-deduction status may be available to a

religious school that practices acts of racial restriction because of the requirements of the religion. 330 F. Supp. p. 1169.

The University respectfully submits that the application of the *Green* decision in the context of *Williams Packing* where the *Green* court itself specifically refused to decide the question asserted by the University is misplaced. The University has cited numerous cases supporting its constitutional rights, which are far more applicable to the present controversy than *Green. Speiser v. Randall*, 357 U.S. 513, 78 S.Ct. 1332; *First Unitarian Church v. County of Los Angeles*, 357 U.S. 545, 78 S. Ct. 1350; *Scherbert v. Verner*, 375 U.S. 398, 83 S. Ct. 1790.

VII

The Appellee respectfully submits that this court misapplied or misapprehended the inherent jurisdiction of federal courts to grant relief in cases of this nature. As stated in *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narc.*, 409 F.2d 718 (1969), "The power to declare an action of the legislative or executive branch unconstitutional is an empty one if the judiciary lacks a remedy to stop or prevent the action. Few more unseemly sights for a democratic country operating under a system of limited governmental power can be imagined than the specter or its courts standing powerless to prevent a clear transgression by the government of a constitutional right of a person withstanding to assert it."

The Supreme Court has approved of the exercising of this inherent jurisdiction to enjoin the collection of a tax by federal taxing authorities. In a situation similar to that found here, the Court in *Hill v. Wallace*, 359 U.S. 44, 42 S.Ct. 453, found that a so-called tax was for the purpose of compelling boards of trade to comply with regulations many of which had no relevancy to the collection of the tax. Here, the University fails to see any relationship between its religious beliefs and admissions policy and the collection of a tax.

VIII

The Appellee respectfully suggests that this case be reheard in banc in that this case involves questions of exceptional importance. Far-reaching and fundamental constitutional questions are presented which affect in a most serious and irreparable manner the Appellee University, the 4,500 students attending it, the 650 members of its faculty and staff as well as thousands of its contributors and financial supporters. The University submits that the statement of Mr. Justice Oliver Wendell Holmes – "The power to tax is not the power to destroy while this Court sits." *Panhandle Oil Co. v. State of Mississippi*, 277 U.S. 218, 223, 48 S.Ct. 451, 453, remains the law of the land.

For the foregoing reasons this Petition should be granted.

(Signature and Certificates omitted)

UNITED STATES COURT OF APPEALS
For The Fourth Circuit
No. 72-1075

Bob Jones University, *Appellee*,

v.

John B. Connally, Secretary of the Treasury of the United States and Johnnie M. Walters, Commissioner of Internal Revenue, *Appellant*.

Appeal from the United States District Court for the District of South Carolina, at Greenville.

Charles E. Simons, Jr., District Judge.

Submitted February 5, 1973 Decided March 21, 1973

Before BOREMAN, Senior Circuit Judge, and WINTER and BUTZNER, Circuit Judges.

ORDER ON PETITION FOR REHEARING

PER CURIAM:

Bob Jones University (Jones University) petitions for rehearing and suggests rehearing in banc on the ground, *inter alia*, that our decision is in conflict with the decision of the District of Columbia Circuit in *"Americans United" Inc. v. Walters*, — F.2d — (D.C. Cir. January 11, 1973). Of course we were unaware of *Americans United* in deciding our case, but we see no conflict between the two.

In *Americans United*, the District of Columbia Circuit held that the taxpayer was not barred by § 7421 from seeking to have declared unconstitutional, and to enjoin the enforcement of, the provision of § 501(c)(3), I.R.C. of 1954, which denies tax-exempt status to an organization, otherwise exempt under that statute, which engages substantially in activities to influence legislation or participates in political campaigns.

An examination of the opinion discloses that Americans

United was exempt from taxation on its own income by both §§ 501(c)(3) and 501(c)(4), I.R.C. 1954. By virtue of its exemption under § 501(c)(3), contributions were deductible by donors. *Only* the 501(c)(3) exemption was revoked. As a consequence, *only* the deductibility of contributions by donors was removed; the exemption from taxation of its other income was not removed from Americans United. The Court ruled that individual donors could not litigate the deductibility of their contributions; and as a result, the only way in which the question of deductibility of contributions could be litigated was by Americans United in the suit which it filed. In a literal sense, such a suit by Americans United was not a suit for the purpose of restraining the assessment or collection of any tax as proscribed by § 7421 since no revenues taxable to Americans United could be affected.

The same is not true with respect to Jones University. In our case, the sole exemption lay in § 501(c)(3) and this exemption was the one sought to be revoked on the ground of racially discriminatory policies. If the revocation was proper, not only would contributors to Jones University not be entitled to a deduction for their contributions, but Jones University would be taxable on its other income. Because of the latter, the suit was one literally within § 7421, i.e., a suit to restrain the assessment or collection of a tax.

Thus, we think that the cases are distinguishable. Jones University's other grounds for granting the petition also do not persuade us. Therefore, with Judge Boreman dissenting, we deny rehearing. No judge eligible to do so has requested a poll on the suggestion for rehearing in banc.

PETITION DENIED.

IN THE
UNITED STATES COURT OF APPEALS
for the Fourth Circuit

No. 72-1075

MOTION FOR STAY OF MANDATE

Pursuant to rule 41(b) of the Federal Rules of Appeallate Procedure, the Appellee, Bob Jones University, respectfully moves this Honorable Court to stay the mandate in the above-entitled action and not permit the same to be issued out of said cause until the further Order of the Court, on the ground and for the reason that Appellee expects and intends, in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America by petition for a review on writ of certiorari of the decision and judgment rendered in favor of Appellants and against Appellee in the above-entitled action.

Appelee further shows to the Court that unless stayed, the issuance of said mandate will cause irreparable harm to Appellee.

Wherefore, Appellee prays that the Court make and enter an appropriate Order herein staying the issuance of the mandate in the above-entitled action until further Order of the Court.

(Signatures and Certificate of Service omitted)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 72-1075

Bob Jones University,

versus

John B. Connally, Secretary of
the Treasury of the United States
and Johnnie M. Walters, Commissioner
of Internal Revenue,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT GREENVILLE.

Upon consideration of a motion of the appellee, by counsel, for stay of mandate pending application to the United States Supreme Court for a writ of certiorari,

It Is Ordered that the motion is denied.

Judge Boreman would grant the stay.

For the Court – by Direction.
William K. Slate, II
Clerk

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

APPLICATION FOR STAY OF MANDATE

TO THE HONORABLE CHIEF JUSTICE BURGER,
Circuit Justice for the Fourth Circuit

The Petitioner, Bob Jones University, applies for an Order granting a stay of mandate of the Decision of the United States Court of Appeals for the Fourth Circuit, *Bob Jones University v. Connally, et al*, No. 72-1075, decided January 19, 1973, and would respectfully show:

1. On September 9, 1971, the Petitioner University filed

suit in the United States District Court for the District of South Carolina, Greenville Division, against the Commissioner of Internal Revenue and the Secretary of the Treasury seeking injunctive relief preventing the Defendants from revoking the tax exempt status of the University solely because of its admissions policy. The Defendants filed a Motion to Dismiss. On November 17, 1971, the United States District Court issued its temporary injunction granting the relief requested by the University, *Bob Jones University v. Connally, et al,* 341 F. Supp. 277. The Government duly appealed to the United States Court of Appeals for the Fourth Circuit which, by divided Opinion dated January 19, 1973, reversed the District Court and remanded with instructions to grant the Government's Motion to Dismiss. The University petitioned the Circuit Court of Appeals for a rehearing which was denied on March 21, 1973. Pursuant to Rule 41(b), Federal Rules of Appellate Procedure, the University moved the Court of Appeals for a stay of its mandate which was denied.

2. The University expects and intends to petition this Court for a writ of certiorari to review the adverse decision of the United States Court of Appeals for the Fourth Circuit.

3. The University is a private, non-denominational, religious school, enrolling 4,500 students and employing a faculty and staff of 650 on its campus in Greenville, South Carolina. Since its foundation more than 40 years ago, the University has consistently adhered to certain religious beliefs and practices among which is the belief God intended the various races of men to live separate and that the intermarriage of races is contrary to the Word of God. Based upon these well-established beliefs of the University, it had adopted and administered since its foundation, an admissions policy that excludes members of the Negro Race.

4. In the summer of 1970, the Internal Revenue Service announced that it could no longer grant tax-exempt status

to schools, including religious schools, which had racially discriminatory admissions policy. From that time until the filing of this suit in the District Court, various conferences were held between attorneys for the University and the Commissioner of Internal Revenue. The result of these conferences was that the Commissioner of Internal Revenue would insist upon the University's adoption of a racially non-discriminatory admissions policy and that the University's religious beliefs prevented it from adopting such a policy.

5. The University challenged the Commissioner of Internal Revenue asserting that the threatened action of revocation was contrary to the provisions of the Internal Revenue Code, constituted an attempt to exercise power and authority not delegated to the Commissioner of Internal Revenue and was violative of the Constitution of the United States and the First and Fifth Amendments thereto.

6. In reversing, the United States Court of Appeals for the Fourth Circuit found the suit brought by the University barred by the Anti-injunction Statute, 26 U.S.C.A. 7421, and not coming within the exceptions to that Statute enumerated by this Court in *Enochs v. Williams Packing Company*, 370 U.S. 1, 82 S.Ct. 1125 (1962) and *Miller v. Standard Nut Margarine Company of Florida*, 284 U.S. 498, 52 S. Ct. 260.

7. On January 11, 1973, approximately one week before the Decision of the Fourth Circuit Court of Appeals here, the United States Court of Appeals for the District of Columbia Circuit, in *Americans United v. Walters*, No. 71-1299 (not yet reported), decided identical questions concerning the applicability of the Anti-injunction Statute in a manner opposite the Decision of the Fourth Circuit Court of Appeals in this case. The United States Court of Appeals for the District of Columbia Circuit, reversed the Lower Court Decree and remanded with instructions to consider an injunction against the Commissioner of Internal Revenue.

8. The Decision of the Court of Appeals for the Fourth Circuit found that the University would suffer irreparable injury if the Defendants were not enjoined. As stated in the Majority Opinion:

> We have no doubt that Jones University will suffer irreparable injury if withdrawal of its tax exempt status is effected even if it should ultimately prevail in its argument that its tax exempt status may not legally be disturbed.

Thus, if the mandate of the Fourth Circuit Court of Appeals is not stayed, the University will suffer irreparable harm during the time its case is pending in this Court on its Petition for Certiorari. The University has asserted important and far-reaching constitutional questions concerning its right to freely practice is religious beliefs without governmental interference. As stated in the Dissenting Opinion of Judge Boreman;

> Under the blanket protection of unfettered authority over the assessment and collection of taxes claimed and assumed by the Treasury officials, they are undertaking to interfere with and destroy the constitutionally mandated free and meaningful exercise and practice of the long established, widely publicized and unchallenged religious beliefs of Bob Jones University.

The questions presented by the University are of such significance that it is respectfully submitted that this Court should grant its Petition for Certiorari.

9. In view of the finding of irreparable injury, the involvement of substantial constituional questions and a conflicting Circuit Court decision, it is respectfully submitted that the Court below abused its discretion in failing to grant a stay of mandate pending further proceedings in this Court.

10. Counsel for the University is prepared to present oral arguments on this application should the Court desire it.

(Signatures omitted)

"Denied
4/3/73
Warren E. Burger."